

**CHAPTER 1****(HB 143)**

AN ACT amending the 2008-2010 branch budget bills, making an appropriation therefor, and declaring an emergency.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. 2008 Kentucky Acts Chapter 127, Part VI, General Fund Budget Reduction Plan, at page 597, is amended to read as follows:

**PART VI****A. FISCAL YEAR 2008-2009 GENERAL FUND BUDGET REDUCTION PLAN**

*Notwithstanding KRS 48.130 and 48.600, a General Fund Budget Reduction Plan is enacted for fiscal year 2008-2009 for state government pursuant to the Consensus Forecasting Group's official revenue revision dated November 26, 2008, that estimated General Fund revenue receipts of \$8,548,390,000 in fiscal year 2008-2009 and that projected a revenue shortfall of \$457,347,000 in fiscal year 2008-2009, as modified by related Acts and actions of the General Assembly in an extraordinary or regular session.*

*The Governor, the Chief Justice, and the Legislative Research Commission shall direct and implement reductions in appropriations and allotments only for their respective branch budget units as may be necessary, as well as take other measures which shall be consistent with the provisions of this Subpart and general branch budget bills.*

*Given the fiscal year 2008-2009 revenue shortfall as identified by the Consensus Forecasting Group, General Fund budget reduction actions shall be implemented in the following sequence:*

*(1) The Local Government Economic Assistance and the Local Government Economic Development Funds shall be adjusted by the Secretary of the Finance and Administration Cabinet to equal revised estimates of receipts pursuant to KRS 42.4582 as modified by the provisions of this Act;*

*(2) Transfers of excess unappropriated Restricted Funds, other than fiduciary funds, to the General Fund shall be applied as determined by the head of each branch for its respective budget units. No transfers to the General Fund shall be made from the following:*

- (a) Local Government Economic Assistance and Local Government Economic Development Funds;*
- (b) Unexpended debt service from the Tobacco-Settlement Phase I Funds in fiscal year 2007-2008;*
- (c) Tobacco Unbudgeted Interest Income-Rural Development Trust Fund; and*
- (d) Multi-County Coal Severance Fund;*

*(3) Any unanticipated Phase I Master Settlement Agreement revenues in fiscal year 2008-2009 shall be appropriated according to KRS 248.654. The General Fund (Tobacco) fund transfer from the Governor's Office of Agricultural Policy to the General Fund shall be limited to the amounts contained in Part V, A., 1. of this Act as adjusted in Part X, B., 1., (4) of this Act;*

*(4) Pursuant to KRS 18A.2254(3)(a), the General Assembly authorizes, subject to the following conditions, the Governor to direct a one-time transfer of up to \$50,000,000 from the Public Employee Health Insurance Trust Fund's surplus to the General Fund:*

- (a) The Secretary of the Personnel Cabinet and the Secretary of the Finance and Administration Cabinet may request the Governor to transfer surplus funds from the Public Employee Health Insurance Trust Fund in fiscal year 2008-2009. Any such request shall include written documentation that:*

- 1. Funds are or will be available to pay all expenses that have been incurred in all plan years including plan year 2009 to date and all projected claims for all plan years including the remainder of plan year 2009;*

2. *Any transfer will not jeopardize the solvency of the Public Employee Health Insurance Trust Fund;*
  3. *Any transfer will not jeopardize the Public Employee Health Insurance Trust Fund's qualified tax status under the Internal Revenue Code; and*
  4. *Any transfer will not jeopardize the Commonwealth's ability to offer a health reimbursement account; and*
- (b) *After receipt and consideration of such a request, the Governor is authorized to transfer surplus funds in accordance with this section and shall report to the Legislative Research Commission the amount being transferred;*
- (5) *Funds available in the Budget Reserve Trust Fund may be applied in an amount not to exceed \$219,000,000 in fiscal year 2008-2009;*
- (6) *Any language provision that expresses legislative intent regarding a specific appropriation shall not be reduced by a greater percentage than the reduction to the General Fund appropriation for that budget unit;*
- (7) *Reduce General Fund appropriations in Executive Branch Agencies' operating budget units by a sufficient amount to balance fiscal year 2008-2009. No reductions of General Fund appropriations shall be made from the following budget units:*
- (a) *Local Government Economic Assistance Fund;*
  - (b) *Local Government Economic Development Fund;*
  - (c) *Executive Branch Ethics Commission;*
  - (d) *Teachers' Retirement System;*
  - (e) *Parks;*
  - (f) *Support Education Excellence in Kentucky (SEEK);*
  - (g) *County Costs;*
  - (h) *Medicaid Administration;*
  - (i) *Medicaid Benefits;*
  - (j) *Mental Health and Mental Retardation Services;*
  - (k) *Adult Corrections Institutions;*
  - (l) *Community Services and Local Facilities; and*
  - (m) *Kentucky Higher Education Assistance Authority.*

*No reductions shall be made to the Health and Family Services Cabinet's Division of Family Resource and Youth Services Centers.*

*Should an Executive Branch reorganization change the name of any budget unit listed in this subsection, then the reduction prohibition outlined in this subsection shall fall to the budget unit's successor;*

(8) *Excess General Fund appropriations which accrue as a result of personnel vacancies and turnover, and reduced requirements for operating expenses, grants, and capital outlay shall be determined and applied by the heads of the executive, judicial, and legislative departments of state government for their respective branches. The branch heads shall certify the available amounts which shall be applied to budget units within the respective branches and shall promptly transmit the certification to the Secretary of the Finance and Administration Cabinet and the Legislative Research Commission. The Secretary of the Finance and Administration Cabinet shall execute the certified actions as transmitted by the branch heads.*

*Branch heads shall take care, by their respective actions, to protect, preserve, and advance the fundamental health, safety, legal and social welfare, and educational well-being of the citizens of the Commonwealth; and*

(9) *If the actions contained in subsections (1) to (8) of this Subpart are insufficient to eliminate an actual or projected revenue shortfall in the enacted General Fund revenue receipts, then the Governor is empowered and directed to take necessary actions with respect to the Executive Branch budget units to balance the budget by such actions conforming with the criteria expressed in subsections (2), (3), (6), and (7) of this Subpart.*

**B. FISCAL YEAR 2009-2010 GENERAL FUND BUDGET REDUCTION PLAN**

Pursuant to KRS 48.130 and 48.600, a General Fund Budget Reduction Plan is enacted for *fiscal year 2009-2010* for state government in the event of an actual or projected deficit in estimated General Fund revenue receipts of ~~\$9,005,737,000 in fiscal year 2008-2009 and~~ \$9,258,789,000 in fiscal year 2009-2010 as modified by related Acts and actions of the General Assembly in an extraordinary or regular session. Direct services, obligations essential to the minimum level of constitutional functions, and other items that may be specified in this Act, are exempt from the requirements of this Plan. Each branch head shall prepare a specific plan to address a proportionate share of the General Fund revenue shortfall applicable to the respective branch. No budget revision action shall be taken by a branch head in excess of the actual or projected deficit.

The Governor, the Chief Justice, and the Legislative Research Commission shall direct and implement reductions in *appropriations and* allotments ~~and appropriations~~ only for their respective branch budget units as may be necessary, as well as take other measures which shall be consistent with the provisions of this *Subpart* ~~Part~~ and general branch budget bills.

In the event of a revenue shortfall under the provisions of KRS 48.120, General Fund budget reduction actions shall be implemented in the following sequence:

(1) The Local Government Economic Assistance and the Local Government Economic Development Funds shall be adjusted by the Secretary of the Finance and Administration Cabinet to equal revised estimates of receipts pursuant to KRS 42.4582 as modified by the provisions of this Act;

(2) Application of unbudgeted surplus from the previous fiscal year and transfers of excess unappropriated Restricted Funds other than fiduciary funds shall be applied as determined by the head of each branch for its respective budget units;

(3) Funds available in the Budget Reserve Trust Fund shall be applied in an amount not to exceed ~~25 percent of the trust fund balance in fiscal year 2008-2009 and~~ 50 percent of the trust fund balance in fiscal year 2009-2010;

(4) Excess General Fund appropriations which accrue as a result of personnel vacancies and turnover, and reduced requirements for operating expenses, grants, and capital outlay shall be determined and applied by the heads of the executive, judicial, and legislative departments of state government for their respective branches. The branch heads shall certify the available amounts which shall be applied to budget units within the respective branches and shall promptly transmit the certification to the Secretary of the Finance and Administration Cabinet and the Legislative Research Commission. The Secretary of the Finance and Administration Cabinet shall execute the certified actions as transmitted by the branch heads.

Branch heads shall take care, by their respective actions, to protect, preserve, and advance the fundamental health, safety, legal and social welfare, and educational well-being of the citizens of the Commonwealth; and

(5) Notwithstanding KRS 48.130 and 48.600, if the actions contained in subsections (1) to (4) of this *Subpart* ~~Part~~ are insufficient to eliminate an actual or projected revenue shortfall *of five percent or less in aggregate* in the enacted General Fund revenue receipts, then the Governor is empowered and directed to take necessary actions with respect to the Executive Branch budget units to balance the budget by such actions conforming with the criteria expressed in this *Subpart* ~~Part~~. *If the actual or projected revenue shortfall is greater than five percent in aggregate, the Governor is not empowered nor directed to take necessary actions with respect to the Executive Branch budget units to balance the budget by such actions conforming with the criteria expressed in this Subpart.*

*If, after passage of this Act, KRS 48.130 and 48.600 are amended, this Subpart shall be governed by KRS 48.130 and 48.600 as amended by the 2009 Regular Session of the Kentucky General Assembly.*

➔Section 2. 2008 Kentucky Acts Chapter 127, Part II, Capital Projects Budget; F. Environmental and Public Protection Cabinet; 1. General Administration and Program Support; 001. Kentucky Heritage Land Conservation Fund - Additional, at page 549, is amended to read as follows:

**001. Kentucky Heritage Land Conservation Fund - Additional**

Restricted Funds	3,000,000	3,000,000
Federal Funds	1,000,000	1,000,000
Bond Funds	<del>17,000,000</del> 17,000,000	-0-

TOTAL	21,000,000 <del>[14,000,000]</del>	4,000,000
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➔Section 3. 2008 Kentucky Acts Chapter 127, Part V, Funds Transfer; E. Environmental and Public Protection Cabinet; 1. General Administration and Program Support, at page 593, is amended to read as follows:

**1. General Administration and Program Support**

Kentucky Heritage Land

Conservation Fund	-0-17,000,000 <del>[10,000,000]</del>	-0-
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(KRS 146.570)

A ~~\$17,000,000~~~~[10,000,000]~~ capital appropriation from bond funds in Part II, Capital Projects Budget, of this Act will be used to replace this transfer of funds to the General Fund.

➔Section 4. 2008 Kentucky Acts Chapter 127, Part V, Funds Transfer; F. Finance and Administration Cabinet; after 10. Finance and Administration, at page 595, is amended to read as follows:

**11. Finance and Administration**

*Capital Construction and Equipment*

<i>Purchase Contingency Account</i>	-0-	2,000,000	-0-
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(KRS 45.770)

➔Section 5. 2008 Kentucky Acts Chapter 127, Part VII, General Fund Contingency Plan, at pages 597 to 599, as amended by 2008 Kentucky Acts Chapter 174 is further amended to read as follows:

**PART VII**

**GENERAL FUND CONTINGENCY PLAN**

Notwithstanding KRS ~~48.130(7)~~, 48.140, and 48.700, there is established a Contingency Plan for the expenditure of the undesignated balance in the General Fund.

- (1) The undesignated balance in the General Fund shall be determined as provided in Part III, 27., of this Act.
- (2) The undesignated balance in the General Fund in excess of the amount designated for budget purposes as provided in Part III, 27., of this Act are appropriated as provided in subsection (3) of this Part, subject to the following conditions:
  - (a) Expenditures shall be made in the priority order set forth in subsection (3) of this Part; and
  - (b) If funds available are not sufficient to completely fund a listed priority, then the next priority on the list that can be completely funded shall be funded.
- (3) The priority list for the Contingency Plan for the expenditure of General Fund surplus moneys is as follows:
  - (a) Provide, in addition to the salary increase provided in Part I, D., 4., (15) and Part IV of this Act, a one percent annual salary increase to all state employees and all certified and classified employees of local school districts. This increase shall not be provided unless the surplus funds available are sufficient to pay 100 percent of the General Fund cost of the salary and associated fringe benefits;
  - (b) Provide, in addition to the salary increase provided in Part I, D., 4., (15) and Part IV of this Act and paragraph (a) of this subsection, a one percent annual salary increase to all state employees and all certified and classified employees of local school districts. This increase shall not be provided unless the surplus funds available are sufficient to pay 100 percent of the General Fund cost of the salary and associated fringe benefits;
  - (c) Provide \$6,535,000 for one-half year of debt service to support the entirety of the following Capital Projects:
    1. Advanced Technology Center - Owensboro CTC
 

Bond Funds	\$14,055,000
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2. Construct Carrollton Campus - Jefferson CTC  
Bond Funds \$12,000,000
3. Energy and Advanced Technology Center - Madisonville CTC  
Bond Funds \$4,000,000
4. Licking Valley Campus - Phase II Maysville CTC  
Bond Funds \$1,000,000
5. Advanced Manufacturing Facility - Bluegrass CTC  
Bond Funds \$22,000,000
6. Urban Campus - Gateway CTC  
Bond Funds \$21,319,000
7. Construct Materials Characterization/ICSET - Phase II -  
Western Kentucky University  
Bond Funds \$4,500,000
8. Renovate Science Complex Phase III - Western Kentucky  
University  
Bond Funds \$9,000,000
9. Replace Ford College of Business - Grise Hall Phase I -  
Western Kentucky University  
Bond Funds \$5,800,000
10. EKU-UK Dairy Research Project (Meadowbrook Farm) -  
Eastern Kentucky University  
Bond Funds \$5,300,000
11. Expand/Renovate, Construct, or Acquire Existing  
Structure for Betty White Nursing Complex -  
Kentucky State University  
Bond Funds \$4,900,000
12. Renovate Downtown Campus Phase II - Jefferson CTC  
Bond Funds \$28,612,000
13. Construct Business Continuance Datacenter - Morehead State University  
Bond Funds \$2,500,000;

and  
(d) Increase support for the Budget Reserve Trust Fund.

➔ Section 6. 2008 Kentucky Acts Chapter 127, after Part XII, Insurance Coverage, Affordability and Relief to Small Employers (ICARE) program, at page 611, is amended to read as follows:

**PART XIII**

**AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

*The General Assembly recognizes that the American Recovery and Reinvestment Act of 2009, H.R. 1, 111 Cong. (2009), or its successor, gives certain discretion to the Governor. As the only body in the Commonwealth*

*that has the constitutional power to make appropriations, the General Assembly empowers and directs the Governor to spend funds from the American Recovery and Reinvestment Act of 2009, or its successor. It is recognized that the federal dollars received will not be recurring in nature; therefore, the intent of the General Assembly is that funds received from the American Recovery and Reinvestment Act of 2009, or its successor, are not used to permanently expand existing programs, permanently create new programs, or in any way increase the requirements to be placed on the General Fund, Restricted Funds, or Road Fund above the adjusted appropriation level as of June 30, 2009. It is also the intent of the General Assembly that the funds received from the American Recovery and Reinvestment Act of 2009, or its successor, be used for the following purposes:*

- (1) *Restore support to programs that have been reduced in fiscal years 2007-2008 and 2008-2009;*
- (2) *Support programs that shall be eliminated when American Recovery and Reinvestment Act of 2009 funds are no longer available;*
- (3) *Provide funding for one-time expenditures in accordance with the American Recovery and Reinvestment Act of 2009;*
- (4) *Agencies that receive funding for capital or infrastructure projects shall proceed with projects that have been identified and recommended by the Capital Planning Advisory Board;*
- (5) *Local school districts that receive funding for capital or infrastructure projects shall proceed where possible with projects identified and prioritized in the District Facilities Plan as approved by the Kentucky Board of Education;*
- (6) *Transportation infrastructure funding shall be expended on specific road projects as approved in the Biennial Highway Construction Plan. Any funds allocated specifically for Metropolitan Planning Organizations (MPO's) shall be expended on road projects included within the Statewide Transportation Improvement Program (STIP); and*
- (7) *Any General Fund dollars that are not required for expenditure, due to the receipt of American Recovery and Reinvestment Act of 2009 funds, shall be transferred to the Budget Reserve Trust Fund.*

➔Section 7. 2008 Kentucky Acts Chapter 127, Part I, Operating Budget; H. Health and Family Services Cabinet; 3. Medicaid Services; b. Medicaid Benefits; after (20) Appeals, at page 521, is amended to read as follows:

*(21) Timely Payment to Providers: To the extent that funds from the American Recovery and Reinvestment Act of 2009, H.R. 1, 111 Cong. (2009), or its successor, are available, Medicaid Benefits payments shall be utilized to ensure that timely payments are made to providers that have provided services in a timely manner and, to the extent possible, that all payments for such prior services shall be made by June 30, 2009.*

*(22) Oakwood Intermediate Care Facility for the Mentally Retarded/Developmentally Disabled Services: To the extent that funds from the American Recovery and Reinvestment Act of 2009, H.R. 1, 111 Cong. (2009), or its successor, are available, adequate funds shall be provided to directly pay the provider, or to transfer to the Department for Mental Health and Mental Retardation Services for payment to the provider, for all services provided to clients of Oakwood Intermediate Care Facility for the Mentally Retarded/Developmentally Disabled in fiscal year 2008-2009. To the extent possible, all payments for such prior services shall be made by June 30, 2009.*

➔Section 8. 2008 Kentucky Acts Chapter 127, after Part XII, Insurance Coverage, Affordability and Relief to Small Employers (ICARE) program, and after Section 6 of this Act is inserted, at page 611, is amended to read as follows:

#### **PART XIV**

##### **LEGISLATIVE BRANCH FUND TRANSFER**

*The Legislative Branch shall transfer \$2,108,500 to the General Fund in fiscal year 2008-2009.*

#### **PART XV**

##### **JUDICIAL BRANCH FUND TRANSFER**

*The Judicial Branch shall transfer \$7,622,400 to the General Fund in fiscal year 2008-2009.*

➔Section 9. Whereas the Commonwealth of Kentucky is facing a projected revenue shortfall, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Signed by the Governor February 13, 2009.**

## CHAPTER 2

### (HB 144)

AN ACT relating to taxation and declaring an emergency.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 138.140 is amended to read as follows:

- (1) A tax shall be paid on the sale of cigarettes within the state at a proportionate rate of three cents (\$0.03) on each twenty (20) cigarettes.~~[This tax shall be paid only once, regardless of the number of times the cigarettes may be sold in this state.]~~
- (2) Effective ***April 1, 2009***~~[June 1, 2005]~~, a surtax shall be paid in addition to the tax levied in subsection (1) of this section at a proportionate rate of ***fifty-six cents (\$0.56)***~~[twenty-six cents (\$0.26)]~~ on each twenty (20) cigarettes. This tax shall be paid only once, at the same time the tax imposed by subsection (1) of this section is paid~~[, regardless of the number of times the cigarettes may be sold in the state].~~
- (3) Effective June 1, 2005, a surtax shall be paid in addition to the tax levied in subsection (1) of this section and in addition to the surtax levied by subsection (2) of this section, at a proportionate rate of one cent (\$0.01) on each twenty (20) cigarettes. This tax shall be paid~~[only once,]~~ at the same time the tax imposed by subsection (1) of this section and the surtax imposed by subsection (2) of this section are paid. ***The revenues from this surtax shall be deposited in the cancer research institutions matching fund created in KRS 164.043***~~[, regardless of the number of times the cigarettes may be sold in the state].~~
- (4)~~[(a)]~~ Effective ***April 1, 2009***~~[August 1, 2005]~~, an excise tax shall be imposed upon all wholesalers of other tobacco products at the rate of ***fifteen percent (15%)***~~[seven and one-half percent (7.5%)]~~ of the gross receipts of any wholesaler derived from wholesale sales made within the Commonwealth.
 

~~[(b) This excise tax shall be paid only once, regardless of the number of times the tobacco product may be sold in the state.]~~
- (5) Effective ***April 1, 2009***~~[August 1, 2005]~~, a tax shall be imposed upon all wholesalers of snuff at a rate of ***nineteen cents (\$0.19)***~~[nine and one-half cents (\$0.095)]~~ per unit. As used in this section unit means a hard container not capable of containing more than one and one-half (1-1/2) ounce. In determining the quantity subject to the tax under this subsection, if a package on which the tax is levied, contains more than an individual unit, the taxable quantity shall be calculated by multiplying the total number of individual units by the rate set in this subsection.~~[The tax imposed under this subsection shall be paid only once, regardless of the number of times the snuff may be sold in this state.]~~
- (6)
  - (a) Effective June 1, 2006, every person licensed under KRS 138.195 to affix tax evidence, every wholesaler required to pay the tax imposed by subsection (4) of this section, and every other person selling cigarette paper at wholesale in this state shall pay an excise tax on the sale of cigarette paper.
  - (b) The tax shall be in the amount of twenty-five cents (\$0.25) per package of thirty-two (32) sheets. For packages of greater or less than thirty-two (32) sheets, the tax shall be calculated at seventy-eight thousandths of one cent (\$0.0078) per sheet.
  - (c) The tax shall be remitted to the Department of Revenue at the same time and in the same manner as the tax imposed in subsection (4) of this section.
  - ~~[(d) The tax shall be paid only once, regardless of the number of times the cigarette paper may be sold in this state.]~~
- (7) ***The taxes imposed by subsections (1) to (6) of this section shall be paid only once, regardless of the number of times the cigarette, other tobacco product, snuff or cigarette papers may be sold.***

(8) The department may prescribe forms and promulgate administrative regulations to execute and administer the provisions of this section.

~~(9)~~~~(8)~~ The General Assembly recognizes that increasing taxes on tobacco products should reduce consumption, and therefore result in healthier lifestyles for Kentuckians. The relative taxes on tobacco products proposed in this section reflect the growing data from scientific studies suggesting that although smokeless tobacco poses some risks, those health risks are significantly less than the risks posed by other forms of tobacco products. Moreover, the General Assembly acknowledges that some in the public health community recognize that tobacco harm reduction should be a complementary public health strategy regarding tobacco products. Taxing tobacco products according to relative risk is a rational tax policy and may well serve the public health goal of reducing smoking-related mortality and morbidity and lowering health care costs associated with tobacco-related disease.

➔Section 2. KRS 138.143 is amended to read as follows:

(1) Every retailer, *sub-jobber*, resident wholesaler, nonresident wholesaler, and unclassified acquirer shall:

~~(a)~~~~(1)~~ Take a physical inventory of all cigarettes in packages bearing Kentucky tax stamps, and all unaffixed Kentucky cigarette tax stamps possessed by them or in their control at 11:59 p.m. on *March 31, 2009*~~[May 31, 2005]~~. Inventory of cigarettes in vending machines may be accomplished by:

1.~~(a)~~ Taking an actual physical inventory;

2.~~(b)~~ Estimating the cigarettes in vending machines by reporting one-half (1/2) of the normal fill capacity of the machines, as reflected in individual inventory records maintained for vending machines; or

3.~~(c)~~ Using a combination of the methods in prescribed paragraphs (a) and (b) of this subsection;

~~(b)~~~~(2)~~ File a return with the department ~~of Revenue~~ on or before *April 10, 2009*~~[June 10, 2005]~~, showing the entire wholesale and retail inventories of cigarettes in packages bearing Kentucky tax stamps, and all unaffixed Kentucky cigarette tax stamps possessed by them or in their control at 11:59 p.m. on *March 31, 2009*; ~~and~~~~[May 31, 2005]~~;

~~(3)~~ Pay a floor stock tax at a rate equal to that imposed by KRS 138.140(2) with the calculation based upon a proportionate rate of one cent (\$0.01) on each twenty (20) cigarettes in packages bearing a Kentucky tax stamp and unaffixed Kentucky tax stamps in their possession or control at 11:59 p.m. on *May 31, 2005*; and

~~(4)~~~~(c)~~ Pay a floor stock tax at a *proportionate* rate equal to *thirty cents (\$0.30)*~~[that imposed by KRS 138.140(2), with the calculation based upon a proportionate rate of twenty six cents (\$0.26)]~~ on each twenty (20) cigarettes in packages bearing a Kentucky tax stamp and unaffixed Kentucky tax stamps in their possession or control at 11:59 p.m. on *March 31, 2009*~~[May 31, 2005]~~.

(2) *Every retailer and sub-jobber shall:*

(a) 1. *Take a physical inventory of all units of snuff possessed by them or in their control at 11:59 p.m. on March 31, 2009;*

2. *File a return with the department on or before April 10, 2009, showing the entire inventory of snuff possessed by them or in their control at 11:59 on March 31, 2009; and*

3. *Pay a floor stock tax at a proportionate rate equal to nine and one-half cents (\$0.095) on each unit of snuff in their possession or control at 11:59 p.m. on March 31, 2009; and*

(b) 1. a. *Take a physical inventory of all other tobacco products possessed by them or in their control at 11:59 p.m. on March 31, 2009;*

b. *File a return with the department on or before April 10, 2009, showing the entire inventories of other tobacco products possessed by them or in their control at 11:59 p.m. on March 31, 2009; and*

c. *Pay a floor stock tax at a proportionate rate equal to seven and one-half percent (7.5%) on the purchase price of other tobacco products in their possession or control at 11:59 p.m. on March 31, 2009.*

2. *As used in this paragraph, "purchase price" means the actual amount paid for the other tobacco products subject to the tax imposed by this paragraph.*

- a. *If the retailer or sub-jobber cannot determine the actual amount paid for each item of other tobacco product, the retailer or sub-jobber may use as the purchase price the amount per unit paid as reflected on the most recent invoice received prior to April 1, 2009, for the same category of other tobacco product.*
  - b. *To prevent double taxation, if the invoice used by the retailer or sub-jobber to determine the purchase price of the other tobacco product does not separately state the tax paid by the wholesaler, the retailer or sub-jobber may reduce the amount paid per unit by seven and one-half percent (7.5%).*
- (3) (a) The ~~taxes~~~~tax~~ imposed by this section ~~may~~~~shall~~ be paid in three (3)~~equal~~ installments.~~with~~ The first installment, *in an amount equal to at least one-third (1/3) of the total amount due, shall*~~to~~ be remitted with the return *provided by the department* on or before ~~April 10, 2009~~~~June 10, 2005~~. The second installment, *in an amount that brings the total amount paid to at least two-thirds (2/3) of the total amount due, shall be remitted*~~shall be paid~~ on or before ~~May 10, 2009~~~~July 10, 2005~~, and the third installment, *in an amount equal to the remaining balance, shall be remitted*~~shall be paid~~ on or before ~~June 10, 2009~~~~August 10, 2005~~.
- (b) Interest shall not be imposed against any outstanding installment payment not yet due from any retailer, *sub-jobber*, resident wholesaler, nonresident wholesaler or unclassified acquirer who files the return and makes payments as required under this section.
- (c) Any retailer, *sub-jobber*, resident wholesaler, nonresident wholesaler or unclassified acquirer who fails to file a return or make a payment on or before the dates provided in this section shall, in addition to the tax, pay interest at the tax interest rate as defined in KRS 131.010(6) from the date on which the return was required to be filed.

➔Section 3. KRS 139.470 is amended to read as follows:

There are excluded from the computation of the amount of taxes imposed by this chapter:

- (1) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property which this state is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution of this state;
- (2) Gross receipts from sales of, and the storage, use, or other consumption in this state of:
  - (a) Nonreturnable and returnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; and
  - (b) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling;

As used in this section the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers";

- (3) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property used for the performance of a lump-sum, fixed-fee contract of public works executed prior to February 5, 1960;
- (4) Gross receipts from occasional sales of tangible personal property and the storage, use, or other consumption in this state of tangible personal property, the transfer of which to the purchaser is an occasional sale;
- (5) Gross receipts from sales of tangible personal property to a common carrier, shipped by the retailer via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier;
- (6) Gross receipts from sales of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less, if the retailer is primarily engaged in making the sales and maintains records satisfactory to the department. As used in this subsection, "bulk vending machine" means a vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer;

- (7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the state and gross receipts from sales to counties, cities, or special districts as defined in KRS 65.005. This exemption shall apply only to purchases of property or services for use solely in the government function. A purchaser not qualifying as a governmental agency or unit shall not be entitled to the exemption even though the purchaser may be the recipient of public funds or grants;
- (8) (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. As used in this subsection, "fuel" shall include but not be limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood. Determinations of eligibility for the exemption shall be made by the Department of Revenue;
- (b) In making the determinations of eligibility, the department shall exempt from taxation all gross receipts derived from sales:
1. Classified as "residential" by a utility company as defined by applicable tariffs filed with and accepted by the Public Service Commission;
  2. Classified as "residential" by a municipally owned electric distributor which purchases its power at wholesale from the Tennessee Valley Authority;
  3. Classified as "residential" by the governing body of a municipally owned electric distributor which does not purchase its power from the Tennessee Valley Authority, if the "residential" classification is reasonably consistent with the definitions of "residential" contained in tariff filings accepted and approved by the Public Service Commission with respect to utilities which are subject to Public Service Commission regulation.
- If the service is classified as residential, use other than for "residential" purposes by the customer shall not negate the exemption;
- (c) The exemption shall not apply if charges for sewer service, water, and fuel are billed to an owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle park other than residential classification; and
- (d) The exemption shall apply also to residential property which may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years;
- (9) Any rate increase for school taxes and any other charges or surcharges added to the total amount of a residential telecommunications service. For purposes of this section, "residential telecommunications service" means a telecommunications service as defined in KRS 139.195 or an ancillary service as defined in KRS 139.195 provided to:
- (a) An individual for personal use at a residential address, including an individual dwelling unit such as an apartment; or
  - (b) An individual residing in an institution such as a school or nursing home if the service is paid for by an individual resident rather than the institution;
- (10) Gross receipts from sales to an out-of-state agency, organization, or institution exempt from sales and use tax in its state of residence when that agency, organization, or institution gives proof of its tax-exempt status to the retailer and the retailer maintains a file of the proof;
- (11) Gross receipts derived from the sale of, and the storage, use, or other consumption in this state of, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property at a plant facility and which will be for sale. The property shall be regarded as having been purchased for resale. "Plant facility" shall have the same meaning as defined in KRS 139.010. For purposes of this subsection, a manufacturer or industrial processor includes an individual or business entity that performs only part of the manufacturing or industrial processing activity and the person or business entity need not take title to tangible personal property that is incorporated into, or becomes the product of, the activity.
- (a) Industrial processing includes refining, extraction of petroleum and natural gas, mining, quarrying, fabricating, and industrial assembling. As defined herein, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale shall mean:

1. Materials which enter into and become an ingredient or component part of the manufactured product;
  2. Other tangible personal property which is directly used in manufacturing or industrial processing, if the property has a useful life of less than one (1) year. Specifically these items are categorized as follows:
    - a. Materials. This refers to the raw materials which become an ingredient or component part of supplies or industrial tools exempt under subdivisions b. and c. below.
    - b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, explosives, etc. The supplies indicated above need not come in direct contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind.
    - c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc., and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, cutting blades, etc. Normally, for industrial tools to be considered directly used in manufacturing, they shall come into direct contact with the product being manufactured; and
  3. Materials and supplies that are not reusable in the same manufacturing process at the completion of a single manufacturing cycle, excluding repair, replacement, or spare parts of any kind. A single manufacturing cycle shall be considered to be the period elapsing from the time the raw materials enter into the manufacturing process until the finished product emerges at the end of the manufacturing process.
    - (b) It shall be noted that in none of the three (3) categories is any exemption provided for repair, replacement, or spare parts. Repair, replacement, or spare parts shall not be considered to be materials, supplies, or industrial tools directly used in manufacturing or industrial processing. "Repair, replacement, or spare parts" shall have the same meaning as set forth in KRS 139.010;
- (12) Any water use fee paid or passed through to the Kentucky River Authority by facilities using water from the Kentucky River basin to the Kentucky River Authority in accordance with KRS 151.700 to 151.730 and administrative regulations promulgated by the authority;
- (13) Gross receipts from the sale of newspaper inserts or catalogs purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is retailer's shipping point or purchaser's destination.
- (a) As used in this subsection:
    1. "Catalogs" means tangible personal property that is printed to the special order of the purchaser and composed substantially of information regarding goods and services offered for sale; and
    2. "Newspaper inserts" means printed materials that are placed in or distributed with a newspaper of general circulation.
  - (b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the department;
- (14) Gross receipts from the sale of water used in the raising of equine as a business;
- (15) Gross receipts from the sale of metal retail fixtures manufactured in this state and purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or the purchaser's destination.

- (a) As used in this subsection, "metal retail fixtures" means check stands and belted and nonbelted checkout counters, whether made in bulk or pursuant to specific purchaser specifications, that are to be used directly by the purchaser or to be distributed by the purchaser.
  - (b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the department;
- (16) Gross receipts from the sale of unenriched or enriched uranium purchased for ultimate storage, use, or other consumption outside this state and delivered to a common carrier in this state for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer, or is an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or purchaser's destination;
- (17) Amounts received from a tobacco buydown. As used in this subsection, "buydown" means an agreement whereby an amount, whether paid in money, credit, or otherwise, is received by a retailer from a manufacturer or wholesaler based upon the quantity and unit price of tobacco products sold at retail that requires the retailer to reduce the selling price of the product to the purchaser without the use of a manufacturer's or wholesaler's coupon or redemption certificate;
- (18) Gross receipts from the sale of property returned by a purchaser when the full sales price is refunded either in cash or credit. This exclusion shall not apply if the purchaser, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned;
- (19) Gross receipts from the sales of gasoline and special fuels subject to tax under KRS Chapter 138;
- (20) The amount of any tax imposed by the United States upon or with respect to retail sales, whether imposed on the retailer or the consumer, not including any manufacturer's excise or import duty;
- (21) Gross receipts from the sale of any motor vehicle as defined in KRS 138.450 which is:
- (a) Sold to a Kentucky resident, registered for use on the public highways, and upon which any applicable tax levied by KRS 138.460 has been paid; or
  - (b) Sold to a nonresident of Kentucky if the nonresident registers the motor vehicle in a state that:
    1. Allows residents of Kentucky to purchase motor vehicles without payment of that state's sales tax at the time of sale; or
    2. Allows residents of Kentucky to remove the vehicle from that state within a specific period for subsequent registration and use in Kentucky without payment of that state's sales tax;
- (22) Gross receipts from the sale of a semi-trailer as defined in KRS 189.010(12) and trailer as defined in KRS 189.010(17); **and**
- ~~(23) Gross receipts from the sale of distilled spirits, wine, and malt beverages not consumed on the premises licensed for their sale under the provisions of KRS Chapter 243; and~~
- ~~(24) Gross receipts from the first fifty thousand dollars (\$50,000) in sales of admissions to county fairs held in Kentucky in any calendar year by a nonprofit county fair board.~~
- ➔Section 4. Section 3 of this Act takes effect on April 1, 2009.
- ➔Section 5. Whereas the financial stability of the Commonwealth is in jeopardy, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by the Governor February 13, 2009.**

### CHAPTER 3

#### (HB 100)

AN ACT relating to the agricultural program trust fund, making an appropriation therefor, and declaring an emergency.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 246 IS CREATED TO READ AS FOLLOWS:

- (1) *The agricultural program trust fund is hereby created as a separate revolving fund to be administered by the Department of Agriculture.*
- (2) *The fund shall consist of money deposited in the fund pursuant to Section 2 of this Act and any other proceeds from grants, contributors, appropriations, or other moneys available for purposes of the trust fund.*
- (3) *Moneys in the fund shall be used for agricultural programs administered by the department.*
- (4) *Notwithstanding KRS 45.229, any balance remaining in the fund at the end of a fiscal year shall not lapse. Any balance remaining at the end of a fiscal year shall be carried forward to the next fiscal year. Any interest earnings of the fund shall become part of the revolving fund and shall not lapse.*

➔Section 2. KRS 186.050 is amended to read as follows:

- (1) The annual registration fee for motor vehicles, including taxicabs, airport limousines, and U-Drive-Its, primarily designed for carrying passengers and having provisions for not more than nine (9) passengers, including the operator, and pickup trucks and passenger vans which are not being used on a for-hire basis shall be eleven dollars fifty cents (\$11.50).
- (2) Except as provided in KRS 186.041 and 186.162, the annual registration fee for each motorcycle shall be nine dollars (\$9), and for each sidecar attachment, seven dollars (\$7).
- (3) (a) All motor vehicles having a declared gross weight of vehicle and any towed unit of ten thousand (10,000) pounds or less, except those mentioned in subsections (1) and (2) of this section and those engaged in hauling passengers for hire, operating under certificates of convenience and necessity, are classified as commercial vehicles and the annual registration fee, except as provided in subsections (4) to (14) of this section, shall be eleven dollars and fifty cents (\$11.50).
- (b) All motor vehicles except those mentioned in subsections (1) and (2) of this section, and those engaged in hauling passengers for hire, operating under certificates of convenience and necessity, are classified as commercial vehicles and the annual registration fee, except as provided in subsections (3)(a) and (4) to (14) of this section, shall be as follows:

Declared Gross Weight of Vehicle and Any Towed Unit	Registration Fee
10,001-14,000	30.00
14,001-18,000	50.00
18,001-22,000	132.00
22,001-26,000	160.00
26,001-32,000	216.00
32,001-38,000	300.00
38,001-44,000	474.00
44,001-55,000	669.00
55,001-62,000	1,007.00
62,001-73,280	1,250.00
73,281-80,000	1,410.00

- (4) (a) Any farmer owning a truck having a gross weight of thirty-eight thousand (38,000) pounds or less may have it registered as a farmer's truck and obtain a license for eleven dollars and fifty cents (\$11.50). The applicant's signature upon the certificate of registration and ownership shall constitute a certificate that he is a farmer engaged in the production of crops, livestock, or dairy products, that he owns a truck of the gross weight of thirty-eight thousand (38,000) pounds or less, and that during the next twelve (12) months the truck shall not be used in for-hire transportation and may be used in transporting persons, food, provender, feed, machinery, livestock, material, and supplies necessary for his farming operation, and the products grown on his farm.

- (b) Any farmer owning a truck having a declared gross weight in excess of thirty-eight thousand (38,000) pounds shall not be required to pay the fee set out in subsection (3) of this section and, in lieu thereof, shall pay forty percent (40%) of the fee set out in subsection (3) of this section and shall be exempt from any fee charged under the provisions of KRS 281.752. The applicant's signature upon the registration receipt shall be considered to be a certification that he is a farmer engaged solely in the production of crops, livestock or dairy products, and that during the current registration year the truck will be used only in transporting persons, food, provender, feed, and machinery used in operating his farm and the products grown on his farm.
- (c) ***An initial applicant for, or an applicant renewing, his or her registration pursuant to this subsection, may at the time of application make a voluntary contribution to be deposited into the agricultural program trust fund established in Section 1 of this Act. The recommended voluntary contribution shall be set at ten dollars (\$10) and automatically added to the cost of registration or renewal unless the individual registering or renewing the vehicle opts out of contributing the recommended amount. The county clerk shall collect and forward the voluntary contribution to the cabinet for distribution to the Department of Agriculture.***
- (5) Any person owning a truck or bus used solely in transporting school children and school employees may have the truck or bus registered as a school bus and obtain a license for eleven dollars fifty cents (\$11.50) by filing with the county clerk, in addition to other information required, an affidavit stating that the truck or bus is used solely in the transportation of school children and persons employed in the schools of the district, that he has caused to be printed on each side of the truck or bus and on the rear door the words "School Bus" in letters at least six (6) inches high, and of a conspicuous color, and the truck or bus will be used during the next twelve (12) months only for the purpose stated.
- (6) Any church or religious organization owning a truck or bus used solely in transporting persons to and from a place of worship or for other religious work may have the truck or bus registered as a church bus and obtain a license for eleven dollars and fifty cents (\$11.50) by filing with the county clerk, in addition to other information required, an affidavit stating that the truck or bus will be used only for the transporting of persons to and from a place of worship, or for other religious work, and that there has been printed on the truck or bus in large letters the words "Church Bus," with the name of the church or religious organization owning and using the truck or bus, and that during the next twelve (12) months the truck or bus will be used only for the purpose stated.
- (7) Any person owning a motor vehicle with a gross weight of fourteen thousand (14,000) pounds or less on which a wrecker crane or other equipment suitable for wrecker service has been permanently mounted may register the vehicle and obtain a license for eleven dollars fifty cents (\$11.50) by filing with the county clerk, in addition to other information required, an affidavit that a wrecker crane or other equipment suitable for wrecker service has been permanently mounted on such vehicle and that during the next twelve (12) months the vehicle will be used only in wrecker service. If the gross weight of the vehicle exceeds fourteen thousand (14,000) pounds, the vehicle shall be registered in accordance with subsection (3) of this section. The gross weight of a vehicle used in wrecker service shall not include the weight of the vehicle being towed by the wrecker.
- (8) Motor vehicles having a declared gross weight in excess of eighteen thousand (18,000) pounds, which when operated in this state are used exclusively for the transportation of property within the limits of the city named in the affidavit hereinafter required to be filed, or within ten (10) miles of the city limits of the city if it is a city of the first, second, third, or fourth class, or within five (5) miles of its limits if it is a city of the fifth or sixth class, or anywhere within a county containing an urban-county government, shall not be required to pay the fee as set out in subsection (3) of this section, and in lieu thereof shall pay seventy-five percent (75%) of the fee set forth in subsection (3) of this section and shall be exempt from any fee charged under the provisions of KRS 281.752. Nothing in this section shall be construed to limit any right of nonresidents to exemption from registration under any other provisions of the laws granting reciprocity to nonresidents. Operations outside of this state shall not be considered in determining whether or not the foregoing mileage limitations have been observed. When claiming the right to the reduced fee, the applicant's signature on the certificate of registration and ownership shall constitute a certification or affidavit stating that the motor vehicle when used within this state is used only for the transportation of property within the city to be named in the affidavit and the area above set out and that the vehicle will not be used outside of a city and the area above set out during the current registration period.

- (9) Motor vehicles having a declared gross weight in excess of eighteen thousand (18,000) pounds, which are used exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility, where such mill or processing facility is located at a point not more than fifty (50) air miles from the harvest area or which are used exclusively for the transportation of concrete blocks or ready-mixed concrete from the point at which such concrete blocks or ready-mixed concrete is produced to a construction site where such concrete blocks or ready-mixed concrete is to be used, where such construction site is located at a point not more than thirty (30) air miles from the point at which such concrete blocks or ready-mixed concrete is produced shall not be required to pay the fee as set out in subsection (3) of this section, and in lieu thereof, shall pay seventy-five percent (75%) of the fee set out in subsection (3) of this section and shall be exempt from any fee charged under the provisions of KRS 281.752. The applicant's signature upon the certificate of registration and ownership shall constitute a certification that the motor vehicle will not be used during the current registration period in any manner other than that for which the reduced fee is provided in this section.
- (10) Any owner of a commercial vehicle registered for a declared gross weight in excess of eighteen thousand (18,000) pounds, intending to transfer same and desiring to take advantage of the refund provisions of KRS 186.056(2), may reregister such vehicle and obtain a "For Sale" certificate of registration and ownership for one dollar (\$1). Title to a vehicle so registered may be transferred, but such registration shall not authorize the operation or use of the vehicle on any public highway. No refund may be made under the provisions of KRS 186.056(2) until such time as the title to such vehicle has been transferred to the purchaser thereof. Provided, however, that nothing herein shall be so construed as to prevent the seller of a commercial vehicle from transferring the registration of such vehicle to any purchaser thereof.
- (11) The annual registration fee for self-propelled vehicles containing sleeping or eating facilities shall be twenty dollars (\$20) and the multiyear license plate issued shall be designated "Recreational vehicle." The foregoing shall not include any motor vehicle primarily designed for commercial or farm use having temporarily attached thereto any sleeping or eating facilities, or any commercial vehicle having sleeping facilities.
- (12) The registration fee on any vehicle registered under this section shall be increased fifty percent (50%) when the vehicle is not equipped wholly with pneumatic tires.
- (13)
  - (a) The Department of Vehicle Regulation is authorized to negotiate and execute an agreement or agreements for the purpose of developing and instituting proportional registration of motor vehicles engaged in interstate commerce, or in a combination of interstate and intrastate commerce, and operating into, through or within the Commonwealth of Kentucky. The agreement or agreements may be made on a basis commensurate with, and determined by, the miles traveled on, and use made of, the highways of this Commonwealth as compared with the miles traveled on and use made of highways of other states, or upon any other equitable basis of proportional registration. Notwithstanding the provisions of KRS 186.020, the cabinet shall promulgate administrative regulations concerning the registration of motor vehicles under any agreement or agreements made under this section and shall provide for direct issuance by it of evidence of payment of any registration fee required under such agreement or agreements. Any proportional registration fee required to be collected under any proportional registration agreement or agreements shall be in accordance with the taxes established in this section.
  - (b) Any owner of a commercial vehicle who is required to title his motor vehicle under this section shall first title such vehicle with the county clerk pursuant to KRS 186.020 for a state fee of one dollar (\$1). Title to such vehicle may be transferred; however title without proper registration shall not authorize the operation or use of the vehicle on any public highway. Any commercial vehicle properly titled in Kentucky may also be registered in Kentucky, and, upon payment of the required fees, the department may issue an apportioned registration plate to such commercial vehicle.
  - (c) Any commercial vehicle that is properly titled in a foreign jurisdiction, which vehicle is subject to apportioned registration, as provided in paragraph (a) of this subsection, may be registered in Kentucky, and, upon proof of proper title, and payment of the required fees, the department may issue an apportioned registration plate to the commercial vehicle. The department shall promulgate administrative regulations in accordance with this section.
- (14) Any person seeking to obtain a special license plate for an automobile that has been provided to him pursuant to an occupation shall meet both of the following requirements:
  - (a) The automobile shall be provided for the full-time exclusive use of the applicant; and

- (b) The applicant shall obtain permission in writing from the vehicle owner or lessee on a form provided by the cabinet to use the vehicle and for the vehicle to bear the special license plate.
- (15) An applicant for any motor vehicle registration issued pursuant to this section shall have the opportunity to make a donation of two dollars (\$2) to promote a hunger relief program through specific wildlife management and conservation efforts by the Department of Fish and Wildlife Resources in accordance with KRS 150.015. If an applicant elects to make a contribution under this subsection, the two dollar (\$2) donation shall be added to the regular fee for any motor vehicle registration issued pursuant to this section. One (1) donation may be made per issuance of each registration. The fee shall be paid to the county clerk and shall be transmitted by the State Treasurer to the Department of Fish and Wildlife Resources to be used exclusively for the purpose of wildlife management and conservation activities in support of hunger relief. The county clerk may retain up to five percent (5%) of the fees collected under this subsection for administrative costs associated with the collection of this donation. Any donation requested under this subsection shall be voluntary and may be refused by the applicant at the time of issuance or renewal of a license plate.

➔Section 3. Whereas registration of farm trucks occurs early in the year and the Department of Agriculture wants this effort in place for that early registration period, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon it otherwise becoming a law.

**Signed by the Governor March 6, 2009.**

#### CHAPTER 4

##### (SB 33)

AN ACT relating to the purchase of flags by public institutions.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 2.030 is amended to read as follows:

- (1) The official state flag of the Commonwealth of Kentucky shall be of navy blue silk, nylon, wool or cotton bunting, or some other suitable material, with the seal of the Commonwealth encircled by a wreath, the lower half of which shall be goldenrod in bloom and the upper half the words "Commonwealth of Kentucky," embroidered, printed, painted, or stamped on the center thereof. The dimensions of the flag may vary, but the length shall be one and nine-tenths ( $1 \frac{9}{10}$ ) times the width and the diameter of the seal and encirclement shall be approximately two-thirds ( $\frac{2}{3}$ ) the width of the flag.
- (2) The approved official drawings of the state flag shall be permanently retained in the files of the office of the Secretary of State. All state flags for official use of the Commonwealth shall conform as to color and design with these official drawings.
- (3) The emblem at the head of a flagstaff used to display the flag of the Commonwealth of Kentucky shall be the Kentucky cardinal in an alert but restful pose, cast in bronze, brass, or other suitable material.
- (4) The flying of the state flag at all state buildings and installations including public school buildings, National Guard armories, state parks, and other such buildings is considered proper and is encouraged.
- (5) No disrespect should be shown to the flag of the Commonwealth of Kentucky. With the exception of the flag of the United States of America, the flag of the Commonwealth of Kentucky should not be dipped to any person or thing. The flag should never touch anything beneath it, such as the ground, the floor, water, or merchandise. The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning.
- (6) ***All official flags of the Commonwealth of Kentucky purchased by a public institution shall be manufactured in the United States.***

➔Section 2. KRS 2.040 is amended to read as follows:

- (1) The flag of the United States shall be displayed on the main administration buildings of every public institution, and, during school days, either from the flagstaff or, in inclement weather, within the school building of every schoolhouse.
- (2) The flag, with staff or flagpole, shall be provided for every schoolhouse.

- (3) *All official flags of the United States purchased by a public institution shall be manufactured in the United States.*

➔Section 3. KRS 118.045 is amended to read as follows:

- (1) Every voting location on the day upon which any election is held shall, during voting hours, display an American flag of dimensions of reasonable size, which shall be firmly attached to the main entrance of the voting location so that it will be readily visible to the general public.
- (2) A precinct sheriff shall attach the American flag to the main entrance of the voting location upon the opening of the polls on the election day and shall remove the same upon the closing of the polls.
- (3) The fiscal court of every county shall purchase out of its general fund sufficient American flags for every voting location in that county. *All American flags purchased by the fiscal court shall be manufactured in the United States.*

**Signed by the Governor March 6, 2009.**

## CHAPTER 5

### (HB 99)

AN ACT relating to charitable health care providers and declaring an emergency.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 320.310 is amended to read as follows:

- (1) The board may refuse to issue, refuse to renew, limit or restrict, revoke, or suspend a license, may place on probation, or reprimand a licensee, may order restitution, may impose a fine not to exceed one thousand dollars (\$1,000) for each violation of this chapter or the corresponding administrative regulations, or may impose any combination of these penalties if it finds that an applicant or a licensee has:
  - (a) Engaged in any practice of fraud or deceit in obtaining or attempting to obtain a license;
  - (b) Been convicted of ~~any~~ felony or *has been convicted of a* misdemeanor involving *sexual misconduct* ~~moral turpitude~~. A record of the conviction or a certified copy of the record shall be conclusive evidence;
  - (c) Chronic or persistent inebriety or addiction to a drug habit to an extent that continued practice is dangerous to patients or to the public safety;
  - (d) Been granted a license upon a mistake of material fact;
  - (e) Engaged in incompetence, as determined by the board;
  - (f) Practiced as an itinerant, peddled from door to door, established a temporary office, or practiced optometry outside of or away from his *or her* regular office or place of practice, *except that the board may promulgate administrative regulations to authorize the practice of optometry outside of the licensee's regular office for a charitable purpose as defined by the board;*
  - (g) Employed, procured, induced, aided, or abetted any person, not holding a Kentucky license, to practice optometry or in practicing optometry;
  - (h) Used the title "doctor" or its abbreviation without further qualifying this title or abbreviation with the word "optometrist" or suitable words or letters designating an optometry degree;
  - (i) Engaged in any conduct likely to deceive or defraud the public;
  - (j) Violated any order issued by the board;
  - (k) Had his *or her* license to practice optometry in any other jurisdiction revoked, suspended, limited, placed on conditions of probation, or subjected to any other disciplinary action by *that jurisdiction's* ~~the~~ licensing authority ~~thereof~~;

- (l) Prescribed any therapeutic agent in an amount that the optometrist knows, or should know, is excessive under accepted and prevailing standards, or which the optometrist knows, or has reason to know, will be used or is likely to be used other than for an accepted therapeutic purpose;
  - (m) Developed a physical or mental disability, or other condition, which renders the continued practice by the optometrist dangerous to patients or the public; or
  - (n) Violated any statute under this chapter or administrative regulation promulgated under those statutes.
- (2) Nothing in this section shall prevent an optometrist from establishing branch offices if each office contains minimum equipment as required by administrative regulation of the board, ensures patient care as necessary, and has a Kentucky licensed optometrist in charge of the office.
- (3) Any licensee, permit holder, or certificate holder who is disciplined under this chapter for a minor violation may request in writing that the board expunge the minor violation from the licensee's, permit holder's, or certificate holder's permanent record.
- (a) The request for expungement may be filed no sooner than three (3) years after the date on which the licensee, permit holder, or certificate holder has completed disciplinary sanctions imposed and if the licensee, permit holder, or certificate holder has not been disciplined for any subsequent violation of the same nature within this period of time.
  - (b) No person may have his or her record expunged under this chapter more than once.

The board shall promulgate administrative regulations under KRS Chapter 13A to establish violations which are minor violations under this subsection. A violation shall be deemed a minor violation if it does not demonstrate a serious inability to practice the profession; adversely affect the public health, safety or welfare; or result in economic or physical harm to a person, or create a significant threat of such harm.

➔Section 2. KRS 311.560 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, no person shall engage or attempt to engage in the practice of medicine or osteopathy within this state, or open, maintain, or occupy an office or place of business within this state for engaging in practice, or in any manner announce or express a readiness to engage in practice within this state, unless the person holds a valid and effective license or permit issued by the board as hereinafter provided.
- (2) The provisions of subsection (1) of this section shall not apply to:
  - (a) Commissioned medical officers of the Armed Forces of the United States, or medical officers of the United States Public Health Service, the United States Veterans Administration, and other agencies of the government of the United States of America, while said persons are engaged in the performance, within this state, of their official duties under federal laws;
  - (b)
    1. Persons who, being nonresidents of Kentucky and lawfully licensed to practice medicine or osteopathy in their states of actual residence, infrequently engage in the practice of medicine or osteopathy within this state, when called to see or attend particular patients in consultation and association with a physician licensed pursuant to this chapter; or
    2. Persons who, being current participants in a medical residency program outside of Kentucky and lawfully licensed to practice medicine or osteopathy in the states of their medical residency programs, who participate in a temporary residency rotation of no more than sixty (60) days at a hospital in this Commonwealth. All persons who participate in a temporary residency rotation under this paragraph shall register with the board at no cost, on forms provided by the board, and shall be subject to the jurisdiction of the board for so long as they participate in the residency rotation. Persons who wish to participate in a second or subsequent temporary residency rotation under this paragraph shall seek advance approval of the board;
  - (c) Graduates of medical or osteopathic schools approved by the board, while engaged in performing supervised internship or first-year postgraduate training approved by the board at hospitals in this state. All first-year postgraduate trainees shall register with the board at no cost, on forms provided by the board. No first-year postgraduate trainee shall violate the provisions of KRS 311.595 or KRS 311.597, and any first-year postgraduate trainee who is released or discharged from a training program for a reason that falls within KRS 311.595 or 311.597 shall be reported by the program director to the board.

A residency physician who participates in a temporary residency rotation under paragraph (b) of this subsection shall not be required to obtain a license under KRS 311.530 to 311.620;

- (d) Physicians employed by a sports entity visiting Kentucky for a specific sporting event when the physician holds an active medical or osteopathic license in another state and limits the practice of medicine in Kentucky to medical treatment of the members, coaches, and staff of the sports entity that employs the physician; or
- (e) *Persons who are nonresidents of Kentucky and licensed to practice medicine or osteopathy in their states of residence, and are providing medical services as a charitable health care provider in Kentucky through a nonprofit, all-volunteer sponsoring organization as provided for under KRS 216.940 to 216.945, after confirming to the board that their licenses are currently in good standing in their states of residence and having been issued a written waiver by the board to provide these services during the specific period stated in the written waiver* ~~Volunteer health practitioners providing services under KRS 39A.350 to 39A.366~~.

➔Section 3. Whereas the delivery of optometric services for charitable purposes is important to the health and well-being of children and families in the Commonwealth and a needless delay in the implementation of this Act impedes delivery of that service, an emergency is declared to exist, and Section 1 of this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Signed by the Governor March 11, 2009.**

## CHAPTER 6

### (HB 126)

AN ACT relating to electricians.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 227A.060 is amended to read as follows:

- (1) The office shall issue a license as an "electrical contractor" to an applicant who meets the following requirements:
  - (a) Has paid to the office the application fee not to exceed two hundred dollars (\$200) and the appropriate examination fee, which shall not exceed the actual cost of examination;
  - (b) Has achieved a passing score, as set by the office, on all portions of the examination required by the office. The office shall promulgate administrative regulations to specify who shall take the examination if the applicant is a business entity; and
  - (c) Has submitted proof that he or she has complied with workers' compensation and unemployment insurance laws and administrative regulations and has obtained a general liability insurance policy of not less than five hundred thousand dollars (\$500,000).
- (2) The office shall issue a license as a "master electrician" to an applicant who meets the following requirements:
  - (a) Has paid to the office the application fee not to exceed one hundred dollars (\$100) and the appropriate examination fee not to exceed the actual cost of the examination;
  - (b) Has completed:
    - 1. *a. Six (6) years of verifiable experience in the electrical trade; and*  
*b. ~~2.~~ A training course in electrical work, acceptable to the office, or an additional two (2) years of verifiable experience in the electrical trade; or ~~and~~*
    - 2. *a. Five (5) years of verifiable experience in the electrical trade; and*  
*b. An associate's degree or diploma program in electrical technology at a college within the Kentucky Community and Technical College System after 1998; and*
  - (c) Has achieved a passing score, as set by the office, on all portions of the examination required by the office.

- (3) The office shall issue a license as an "electrician" to an applicant who meets the following requirements:
- (a) Has paid to the office the application fee not to exceed fifty dollars (\$50) and the appropriate examination fee not to exceed the actual cost of the examination;
  - (b) Has completed:
    - 1. *a.* Four (4) years of verifiable experience in the electrical trade; and
    - b.* ~~[2.]~~ A training course in electrical work, acceptable to the office, or an additional two (2) years of verifiable experience in the electrical trade; ~~or [and]~~
    - 2. *a.* ***Three (3) years of verifiable experience in the electrical trade; and***
    - b.* ***An associate's degree or diploma program in electrical technology at a college within the Kentucky Community and Technical College System after 1998; and***
  - (c) Has achieved a passing score, as set by the office, on all portions of the examination required by the office.

➔Section 2. The following KRS section is repealed:

227A.080 Provisions for licensure before July 15, 2004.

**Signed by the Governor March 11, 2009.**

#### CHAPTER 7

##### (HB 161)

AN ACT relating to officers and declaring an emergency.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 62.990 is amended to read as follows:

- (1) Any person who violates subsection (1) of KRS 62.010 or subsection (1) of KRS 62.050 on or after the date thirty (30) days after January 27, 1995, shall be fined not less than five hundred (500) nor more than one thousand dollars (\$1,000).
- (2) *(a)* ***If any person violates subsection (2) or (3) of KRS 62.010 before January 1, 2010, his or her office shall be considered vacant.***
- (b)* If any person violates subsection (2) or (3) of KRS 62.010 ***on or after January 1, 2010***, his office shall be considered vacant and he shall not be eligible for the same office for two (2) years.
- (3) Any person convicted or removed from office under subsection (2) of this section prior to January 10, 1995, may apply to the Circuit Court for relief from the disability of being unable to serve in office. The Circuit Court, upon receipt of the application, shall modify the sentence to remove the disability of holding the office. This subsection shall not be construed to require the removal from office of a person who has been appointed to fill the remainder of the term of a person removed from office under KRS 62.050 and 62.990.

➔Section 2. Whereas it is in the interest of the people of the Commonwealth that the mandate of the people, through the election of an officer, is carried out, and any issues concerning the service of an officer must be speedily dealt with, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by the Governor March 13, 2009.**

#### CHAPTER 8

##### (HB 374)

AN ACT relating to motor fuels taxes and declaring an emergency.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 138.210 is amended to read as follows:

As used in KRS 138.220 to 138.446, unless the context requires otherwise:

- (1) "Accountable loss" means loss or destruction of "received" gasoline or special fuel through wrecking of transportation conveyance, explosion, fire, flood or other casualty loss, or contaminated and returned to storage. The loss shall be reported within thirty (30) days after discovery of the loss to the department in a manner and form prescribed by the department, supported by proper evidence which in the sole judgment of the department substantiates the alleged loss or contamination and which is confirmed in writing to the reporting dealer by the department. The department may make any investigation deemed necessary to establish the bona fide claim of the loss;
- (2) "Gasoline dealer" or "special fuels dealer" means any person who is:
  - (a) Regularly engaged in the business of refining, producing, distilling, manufacturing, blending, or compounding gasoline or special fuels in this state;
  - (b) Regularly importing gasoline or special fuel, upon which no tax has been paid, into this state for distribution in bulk to others;
  - (c) Distributing gasoline from bulk storage in this state;
  - (d) Regularly engaged in the business of distributing gasoline or special fuels from bulk storage facilities primarily to others in arm's-length transactions;
  - (e) In the case of gasoline, receiving or accepting delivery within this state of gasoline for resale within this state in amounts of not less than an average of one hundred thousand (100,000) gallons per month during any prior consecutive twelve (12) months' period, when in the opinion of the department, the person has sufficient financial rating and reputation to justify the conclusion that he will pay all taxes and comply with all other obligations imposed upon a dealer; or
  - (f) Regularly exporting gasoline or special fuels;
- (3) "Department" means the Department of Revenue;
- (4)
  - (a) "Gasoline" means all liquid fuels, including liquids ordinarily, practically, and commercially usable in internal combustion engines for the generation of power, and all distillates of and condensates from petroleum, natural gas, coal, coal tar, vegetable ferments, and all other products so usable which are produced, blended, or compounded for the purpose of operating motor vehicles, showing a flash point of 110 degrees Fahrenheit or below, using the Elliott Closed Cup Test, or when tested in a manner approved by the United States Bureau of Mines, are prima facie commercially usable in internal combustion engines. The term "gasoline" as used herein shall include casing head, absorption, natural gasoline, and condensates when used without blending as a motor fuel, sold for use in motors direct, or sold to those who blend for their own use, but shall not include: propane, butane, or other liquefied petroleum gases, kerosene, cleaner solvent, fuel oil, diesel fuel, crude oil or casing head, absorption, natural gasoline and condensates when sold to be blended or compounded with other less volatile liquids in the manufacture of commercial gasoline for motor fuel, industrial naphthas, rubber solvents, Stoddard solvent, mineral spirits, VM and P & naphthas, turpentine substitutes, pentane, hexane, heptane, octane, benzene, benzine, xylol, toluol, aromatic petroleum solvents, alcohol, and liquefied gases which would not exist as liquids at a temperature of sixty (60) degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute, unless the products are used wholly or in combination with gasoline as a motor fuel;
  - (b) "Special fuels" means and includes all combustible gases and liquids capable of being used for the generation of power in an internal combustion engine to propel vehicles of any kind upon the public highways, including diesel fuel, and dyed diesel fuel used exclusively for nonhighway purposes in off-highway equipment and in nonlicensed motor vehicles, except that it does not include gasoline, aviation jet fuel, kerosene unless used wholly or in combination with special fuel as a motor fuel, or liquefied petroleum gas as defined in KRS 234.100;
  - (c) "Diesel fuel" means any liquid other than gasoline that, without further processing or blending, is suitable for use as a fuel in a diesel powered highway vehicle. Diesel fuel does not include unblended kerosene, No. 5, and No. 6 fuel oil as described in ASTM specification D 396 or F-76 Fuel Naval Distillate MILL-F-166884;

- (d) "Dyed diesel fuel" means diesel fuel that is required to be dyed under United States Environmental Protection Agency rules for high sulfur diesel fuel, or is dyed under the Internal Revenue Service rules for low sulfur fuel, or pursuant to any other requirements subsequently set by the United States Environmental Protection Agency or the Internal Revenue Service;
- (5) "Received" or "received gasoline" or "received special fuels" shall have the following meanings:
- (a) Gasoline and special fuels produced, manufactured, or compounded at any refinery in this state or acquired by any dealer and delivered into or stored in refinery, marine, or pipeline terminal storage facilities in this state shall be deemed to be received when it has been loaded for bulk delivery into tank cars or tank trucks consigned to destinations within this state. For the purpose of the proper administration of this chapter and to prevent the evasion of the tax and to enforce the duty of the dealer to collect the tax, it shall be presumed that all gasoline and special fuel loaded by any licensed dealer within this state into tank cars or tank trucks is consigned to destinations within this state, unless the contrary is established by the dealer, pursuant to rules and regulations prescribed by the department; and
  - (b) Gasoline and special fuel acquired by any dealer in this state, and not delivered into refinery, marine, or pipeline terminal storage facilities, shall be deemed to be received when it has been placed into storage tanks or other containers for use or subject to withdrawal for use, delivery, sale, or other distribution. Dealers may sell gasoline or special fuel to licensed bonded dealers in this state in transport truckload, carload, or cargo lots, withdrawing it from refinery, marine, pipeline terminal, or bulk storage tanks, without paying the tax. In such instances, the licensed bonded dealer purchasing the gasoline or special fuel shall be deemed to have received such fuel at the time of withdrawal from the seller's storage facility and shall be responsible to the state for the payment of the tax thereon;
- (6) "Refinery" means any place where gasoline or special fuel is refined, manufactured, compounded, or otherwise prepared for use;
- (7) "Storage" means all gasoline and special fuel produced, refined, distilled, manufactured, blended, or compounded and stored at a refinery storage or delivered by boat at a marine terminal for storage, or delivered by pipeline at a pipeline terminal, delivery station, or tank farm for storage;
- (8) "Transporter" means any person who transports gasoline or special fuel on which the tax has not been paid or assumed;
- (9) "Bulk storage facility" means gasoline or special fuel storage facilities of not less than twenty thousand (20,000) gallons owned or operated at one (1) location by a single owner or operator for the purpose of storing gasoline or special fuel for resale or delivery to retail outlets or consumers;
- (10) "Average wholesale price" ~~means~~~~shall mean~~:
- (a) The weighted average per gallon wholesale ~~tank wagon~~ price of gasoline, *as determined by the Department of Revenue from information furnished by licensed gasoline dealers or from information available through independent statistical surveys of gasoline prices. Dealers shall furnish to the department within twenty (20) days following the end of the first month of each calendar quarter, the information regarding wholesale selling prices for the previous month as required by the department. The "average wholesale price" shall be determined* exclusive of:
    1. The nine cents (\$0.09) per gallon federal tax in effect on January 1, 1984;~~;~~
    2. Any increase in the federal gasoline tax after July 1, 1984;~~;~~ and
    3. Any fee on imported oil imposed by the Congress of the United States after July 1, 1986 ~~as determined by the Department of Revenue from information furnished by licensed gasoline dealers or from information available through independent statistical surveys of gasoline prices. Dealers shall furnish within twenty (20) days following the end of the first month of each calendar quarter, the information regarding wholesale selling prices for the previous month required by the department~~; and
  - (b) 1. *The Department of Revenue shall determine the "average wholesale price" on a quarterly basis, and shall adjust the "average wholesale price" used in determining the tax rate under Section 2 of this Act as provided in subparagraph 2. of this paragraph. Notwithstanding the provisions of this subparagraph and the provisions of paragraph (a) of this subsection, for purposes of the taxes levied in KRS 138.220, 138.660, and 234.320, in no case shall the "average*

wholesale price" be ~~set at~~~~deemed to be~~ less than one dollar and *seventy-eight and six-tenths cents (\$1.786)*~~thirty four and two tenths cents (\$1.342)~~ per gallon.

2. ~~The "average wholesale price" adjustment for each fiscal year shall not~~, and in no case shall "average wholesale price" be deemed to be more than one dollar and fifty cents (\$1.50) per gallon on or before June 30, 1982. In fiscal year 1982-83, the "average wholesale price" shall not be deemed to increase more than ten percent (10%) over the "average wholesale price" at the close of fiscal year 1981-82; in each subsequent fiscal year the "average wholesale price" shall ~~not be deemed to~~ increase more than ten percent (10%) over the "average wholesale price" at the close of the previous fiscal year;
- (11) "Motor vehicle" means any vehicle, machine, or mechanical contrivance propelled by an internal combustion engine and licensed for operation and operated upon the public highways and any trailer or semitrailer attached to or having its front end supported by the motor vehicles;
- (12) "Public highways" means every way or place generally open to the use of the public as a matter or right for the purpose of vehicular travel, notwithstanding that they may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction;
- (13) "Agricultural purposes" means purposes directly related to the production of agricultural commodities and the conducting of ordinary activities on the farm;
- (14) "Retail filling station" means any place accessible to general public vehicular traffic where gasoline or special fuel is or may be placed into the fuel supply tank of a licensed motor vehicle; and
- (15) "Financial instrument" means a bond issued by a corporation authorized to do business in Kentucky, a line of credit, or an account with a financial institution maintaining a compensating balance.

➔Section 2. KRS 138.220 is amended to read as follows:

- (1) (a) An excise tax at the rate of nine percent (9%) of the average wholesale price rounded to the *nearest one-tenth of one cent (\$0.001)*~~third decimal when computed on a per gallon basis~~ shall be paid on all gasoline and special fuel received in this state. *The tax shall be paid on a per gallon basis.*
- (b) *The average wholesale price shall be determined and adjusted as provided in subsection (10) of Section 1 of this Act.*
- (c) For the purposes of the allocations in KRS 177.320(1) and (2) and 177.365, the amount calculated under this subsection shall be reduced by the amount calculated in subsection (3) of this section.
- (d) Except as provided by KRS Chapter 138, no other excise or license tax shall be levied or assessed on gasoline or special fuel by the state or any political subdivision of the state.
- (e) The tax herein imposed shall be paid by the dealer receiving the gasoline or special fuel to the State Treasurer in the manner and within the time specified in KRS 138.230 to 138.340 and all such tax may be added to the selling price charged by the dealer or other person paying the tax on gasoline or special fuel sold in this state.
- (f) Nothing herein contained shall authorize or require the collection of the tax upon any gasoline or special fuel after it has been once taxed under the provisions of this section, unless such tax was refunded or credited.
- (2) (a) In addition to the excise tax provided in subsection (1) of this section, there is hereby levied a supplemental highway user motor fuel tax to be paid in the same manner and at the same time as the tax provided in subsection (1) of this section.
- (b) ~~The~~~~Such~~ tax shall be calculated, starting with the quarter beginning July 1, 1986, by taking the excise tax resulting from the calculation provided for in subsection (1) of this section and adjusting ~~the~~~~such~~ tax calculated, for each quarter, to reflect decreases in the average wholesale price, as defined in KRS 138.210(10)~~(a)~~. The adjustment shall be made by calculating the difference between the average wholesale price computed for the quarter beginning October 1, 1985, as provided for in subsection (4) of this section, and the average wholesale price computed for the quarter beginning July 1, 1986 and each succeeding quarter, as provided for in subsection (4) of this section.

- (c) ~~If there is~~~~In the event of~~ a decrease in the average wholesale price computed for the quarter beginning October 1, 1985, and ending December 31, 1985, and the average wholesale price computed for the quarter beginning July 1, 1986, and each succeeding quarter, the excise tax shall be adjusted upward for that quarter. The upward adjustment shall equal one-half (1/2) of the decrease between the two (2) quarterly periods, rounded to the third decimal.
- (d) In no case shall the adjustment provided by this subsection result in a supplemental highway user motor fuel tax greater than five cents (\$0.05) on gasoline or two cents (\$0.02) on special fuel and, notwithstanding any adjustment which may be calculated as provided by this subsection, in no case shall the supplemental highway user motor fuel tax for any quarter be less than the previous quarter.
- (e) The supplemental highway user motor fuel tax provided by this subsection and the provisions of subsections (1) and (3) of this section shall constitute the tax on motor fuels imposed by KRS 138.220.
- (3) Effective July 1, 2005, one cent (\$0.01), and effective July 1, 2006, two and one-tenth cents (\$0.021), of the tax collected under subsection (1) of this section shall be excluded from the calculations in KRS 177.320(1) and (2) and 177.365. The funds identified in this subsection shall be deposited into the state road fund.
- (4) Effective with the calendar quarter beginning July 1, 1980, the department shall determine on a consistent basis the average wholesale price for each calendar quarter, on the basis of sales data accumulated for the first month of the preceding quarter. Notification of the average wholesale price shall be given to all licensed dealers at least twenty (20) days in advance of the first day of each calendar quarter.
- (5) Dealers with a tax-paid gasoline or special fuel inventory at the time an average wholesale price becomes effective, shall be subject to additional tax or appropriate tax credit to reflect the increase or decrease in the average wholesale price for the new quarter. The department shall promulgate such rules and regulations to properly administer this provision.

➔Section 3. Whereas the price of motor fuels has fluctuated significantly and the potential impact on the road fund is significant, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by the Governor March 13, 2009.**

## CHAPTER 9

### (HB 330)

AN ACT relating to road projects, making an appropriation therefor, and declaring an emergency.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. Notwithstanding KRS 45.245, 45.246, 45.247, 176.419(2), 176.420, 176.430, and 176.440, the projects authorized by the General Assembly in this Act shall constitute the road plan for the current biennium. Projects with the "FS" designation that cannot be completed due to insufficient funds from the American Recovery and Reinvestment Act of 2009, H.R. 1, 111 Cong. (2009), shall revert back to their original funding category. As used in the previous sentence, "original funding category" refers to the funding categories contained in the road plan as submitted by the Executive Branch to the 2008 General Assembly. Projects with the "SPB" designation that cannot be completed due to insufficient bond funds shall be given funding priority over state projects with a "SP" designation. Projects with "IMG," "NHG," and "STPG" designations are deemed to meet the requirements of 2008 Kentucky Acts Chapter 127, Part I, L., 4., (18) as amended by 2008 Kentucky Acts Chapter 123.

➔Section 2. The General Assembly acknowledges that the project authorizations contained within this Act are based on the Transportation Cabinet's estimates. The Transportation Cabinet shall have the authority to expend funds necessary to complete the projects as authorized in this Act, amended only by variations dictated by bid or unforeseen circumstances.

➔Section 3. This Act in conjunction with 09 HJR 105 shall constitute the six year road plan.

~~➔Section 4. The Transportation Cabinet shall advance, without any further delay, all design/build projects authorized pursuant to 2006 Ky. Acts ch. 252, I, L., 4., (14). Design/Build projects which have been awarded prior to the effective date of this Act shall continue to progress through the construction phase to completion during the remainder of the 2008-2010 biennium. The design/build projects shall continue to advance in accordance with the original contract provisions and the original contract project descriptions.~~

➔Section 5. Whereas the resources dedicated to the Commonwealth's highway system have changed, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

➔Section 6. The 2008-2010 Biennial Highway Construction Plan is as follows:













































































































































































































































































































































































































































































































































**Legislative Research Commission Note (4/14/2009).** In this bill, material that was vetoed by the Governor is bracketed and struck through.

**Vetoed in part, March 26, 2009. Veto not acted upon. Provisions not vetoed became law March 27, 2009, without the Governor's signature. Signed by the Governor March 30, 2009.**

## CHAPTER 10

### (HB 262)

AN ACT relating to property taxes and declaring an emergency.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 134.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) *"Certificate of delinquency" means a tax claim on real property for taxes that:*
  - (a) *Remains unpaid on April 15 under the regular collection schedule, or three (3) full months and fifteen (15) days from the date the taxes were due under an alternative collection schedule as determined under Section 2 of this Act; and*
  - (b) *Has been filed with the county clerk pursuant to Section 6 of this Act;*
- (2) *"Chief executive" means the elected head of the executive branch of government in a city or county;*
- (3) *"Commissioner" means the commissioner of the department; ~~revenue.~~*
- (4) *"County" includes counties, urban-county governments, charter county governments, consolidated local governments, and unified local governments;*
- (5)~~(2)~~ *"Department" means the Department of Revenue; ~~;~~*
- (6) *"Governing body of a county" means the elected legislative body of a county;*
- (7) *"Omitted property" means property described in KRS 132.290;*
- (8)~~(3)~~ *"Real property" includes all lands within this state and improvements thereon.*
- (4)~~1~~ *"Personal property" includes every species and character of property, tangible and intangible, other than real property; ~~;~~*
- (9) *"Personal property certificate of delinquency" means a personal property tax claim that:*
  - (a) *Remains unpaid as of April 15 under the regular collection schedule or three (3) full months and fifteen (15) days from the date the taxes were due under an alternative collection schedule as determined under Section 2 of this Act; and*
  - (b) *Has been filed with the county clerk pursuant to Section 6 of this Act;*
- (10) (a) *"Property taxes" means the ad valorem taxes due the state, a county, a county school district, or other taxing district.*
  - (b) *"Property taxes" also includes any other ad valorem taxes imposed by a governmental entity that are included on the same property tax bill as the levies listed in paragraph (a) of this subsection and that the sheriff is responsible for collecting either through a statutory requirement or agreement with a taxing district;*
- (11) *"Real property" includes all lands within the state and improvements thereon;*
- (12)~~(5)~~ *"Taxpayer" means the owner of property on the assessment date; ~~any person made liable by law to file a return or pay a tax.~~*

~~(13)(6)~~ "Tax claim" includes ~~[, in addition to]~~ the taxes due on a tax bill, the penalties, costs, fees, interest, commissions, the lien provided in *Section 18 of this Act* ~~[subsection (1) of KRS 134.420]~~ and *any* other ~~[such items or]~~ expenses that have become or are by reason of the delinquent tax bill proper legal charges imposed by this chapter against the delinquent taxpayer at any given time; *and*

(14) *"Third-party purchaser" means a purchaser of a certificate of delinquency.*

~~(7)~~ "Uncollectible tax bill" means a tax bill of a delinquent who owns no real property and which has been returned to the fiscal court by the sheriff or collector because there is insufficient or no personal property to satisfy it, and which has been allowed and approved in the settlement with the court as uncollectible.

~~(8)~~ "Sheriff" includes any collector whose duty it is to receive or collect state, county or district taxes.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 134 IS CREATED TO READ AS FOLLOWS:

(1) *All property taxes are due and payable on or before December 31 of the assessment year except as otherwise provided by law. Payment shall be made to the sheriff as provided in Section 3 of this Act unless otherwise provided by law.*

(2) (a) *Any taxpayer who pays the property taxes in full by November 1 of the assessment year shall receive a two percent (2%) discount on the amount otherwise due.*

(b) *Taxes paid in full between November 2 and December 31 of the assessment year shall be paid at the amount reflected on the tax bill without discount or penalty.*

(c) *Taxes paid in full between January 1 and January 31 of the year following the assessment year shall be subject to a penalty of five percent (5%) of the taxes due and unpaid.*

(d) *Taxes paid after January 31 of the year following the assessment year shall be subject to a penalty of ten percent (10%) of the taxes due and unpaid.*

(3) *If the regular collection schedule established by subsections (1) and (2) of this section is delayed, the department may establish an alternative collection schedule. Taxes shall be due two (2) full months from the date the tax bills are mailed. The alternative collection schedule shall allow a two percent (2%) discount for all tax bills paid in full within one (1) full month of the date the tax bills were mailed. Upon expiration of the discount period, the face amount reflected on the tax bill without discount or penalty shall be due for the next full month. Payments made within one (1) month following the face amount period shall be subject to a penalty of five percent (5%) of the taxes due and unpaid. Payments made after the five percent (5%) penalty period shall be subject to a penalty of ten percent (10%) of the taxes due and unpaid.*

(4) *All taxes due under this section and all fees, penalties, and interest thereon are a personal debt of the taxpayer on the assessment date, from the time the tax becomes due until paid.*

(5) *The lien that attaches to property on which taxes have become delinquent under Section 18 of this Act shall continue as provided in Section 18 of this Act, from the time the taxes become delinquent until the taxes are paid or the eleven (11) year period established by Section 18 of this Act expires, regardless of who owns the property.*

(6) *A tax bill issued against omitted property, or an increase in valuation over that claimed by the taxpayer, as finally determined upon appeal as provided for in KRS 133.120, shall be due the day the bill is prepared and shall be considered delinquent on that date. If the tax bill is not paid within one (1) full month of the due date, an additional penalty of ten percent (10%) of the tax, fees, penalties, and interest due shall be added to the tax bill. The laws relating to delinquent taxes on the same class of property or taxpayers involved shall apply to delinquent omitted tax bills unless otherwise provided by law.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 134 IS CREATED TO READ AS FOLLOWS:

(1) (a) *The sheriff shall be the collector of all state, county, county school district, and other taxing district property taxes unless the payment is directed by law to be made to some other person. The sheriff may contract to collect taxes on behalf of cities, independent school districts, or any other governmental unit with the authority to levy a property tax, if the enabling legislation authorizing imposition of the tax permits the governmental unit to contract for the performance of tax collection duties.*

- (b) *The provisions of this chapter relating to the collection of property taxes shall apply to other property tax collectors to the extent that the governing body of the city, school district, or taxing district appointing the tax collector has not adopted alternative tax collection processes and procedures.*
- (2) *Payment to the sheriff may be provided by any commercially acceptable means. The sheriff may limit the acceptable methods of payment to those that ensure that payment cannot be reversed or nullified due to insufficient funds.*
- (3) (a) *The sheriff shall accept payment from the day on which the tax bills are mailed by the sheriff to the taxpayer as provided in KRS 133.220 and 133.230, through the day on which the sheriff files the uncollected tax claims with the county clerk pursuant to Section 6 of this Act. During this time period, the sheriff may accept full or partial payment for any outstanding taxes or tax claims.*
- (b) *All payments received by the sheriff shall be entered immediately by the sheriff on his or her books. Partial payments shall be credited against the total amount due and shall be apportioned by the sheriff among the entities included on the tax bill in the same proportion the amount due to each bears to the amount paid.*
- (c) *The acceptance of any payment before the taxpayer's tax liability has been finally determined shall not imply that the payment was the correct amount due and shall not preclude the assessment and collection of additional taxes due or the refund of any part of the amount paid that is in excess of the amount determined to be due.*
- (d) *The sheriff may accept payment of any tax or tax claim from any other person on behalf of the taxpayer. Any person making a payment on behalf of a taxpayer may, upon the written notarized request of the taxpayer, be treated as a transferee as provided in Section 5 of this Act.*
- (e) *The sheriff may accept payment of any amount due on a delinquent tax claim from any of the persons described in subparagraphs 1., 2., and 3. of this paragraph without permission of the taxpayer. The person seeking to make the payment shall provide sufficient proof to the sheriff that he or she meets the requirements to pay under this paragraph. The sheriff shall be held harmless if he or she relies upon information provided and accepts payment from a person not qualified to pay under this paragraph. Any person listed in subparagraph 1., 2., or 3. of this paragraph who makes full payment, may, upon written request to the sheriff, be treated as a transferee under the provisions of Section 5 of this Act:*
1. *Any person holding a legal or equitable estate in the real or personal property upon which the delinquent taxes are due, other than a person whose only interest in the property is a lien resulting from ownership of a prior year certificate of delinquency;*
  2. *A tenant or lawful occupant of real property, or a bailee or person in possession of any personal property upon which the delinquent taxes are due; or*
  3. *Any person having a mortgage on real property or a security interest in real or personal property upon which the delinquent taxes are due.*
- (4) *If, upon expiration of the five percent (5%) penalty period established by subsection (2)(c) of Section 2 of this Act, the real property tax delinquencies of a sheriff exceed fifteen percent (15%) of the amount charged to the sheriff for collection, the department may require the sheriff to make additional reasonable collection efforts. If the sheriff fails to initiate additional reasonable collection efforts within fifteen (15) business days following notification from the department that such efforts shall be made, the department may assume responsibility for collecting the delinquent taxes. If the department assumes the responsibility for collecting delinquent taxes, the department shall receive the amounts that would otherwise be paid to the sheriff as fees or commissions for the collection of tax bills.*
- (5) *In collecting delinquent taxes, the sheriff:*
- (a) *May distraint and sell personal property owned by a delinquent taxpayer in the amount necessary to satisfy the delinquent tax claim. The sale shall be made under execution for cash. If the personal property of the delinquent taxpayer within the county is not sufficient to satisfy the delinquent tax claim, the sheriff may sell so much of the personal property as is available; and*
  - (b) *Shall retain any amounts that come into his or her possession payable to a delinquent taxpayer, other than claims allowed for attendance as a witness, and shall apply such amounts to the amount due on the delinquent tax claim.*

- (6) (a) *As compensation for collecting property taxes the sheriff shall be paid the following amounts, regardless of whether the amounts are collected by the sheriff prior to filing the tax claims with the county clerk, or by the county clerk after the tax claims become certificates of delinquency or personal property certificates of delinquency:*
1. *From the Commonwealth the sheriff shall be paid four and one-quarter percent (4.25%) of the amount collected on behalf of the Commonwealth;*
  2. *From counties the sheriff shall be paid four and one-quarter percent (4.25%) of the amount collected on behalf of the counties;*
  3. *The sheriff shall be compensated as provided by law or as negotiated if negotiation is permitted by law, for collecting taxes on behalf of any taxing district;*
  4. *The sheriff shall be compensated as provided in Section 64 of this Act for collecting school district taxes; and*
  5. *The sheriff shall be compensated as provided in KRS 91A.070 for collecting taxes on behalf of any city.*
- (b) *The sheriff shall include the amounts he or she is entitled to under the provisions of paragraph (a) of this subsection as part of the delinquent tax claims filed with the county clerk. The amount so included shall become a part of the certificate of delinquency, and shall be paid by the person paying the certificate of delinquency rather than the taxing jurisdiction for which the taxes were collected.*
- (7) *As additional compensation for the collection of delinquent taxes, the sheriff shall be entitled to an amount equal to ten percent (10%) of the total taxes due plus ten percent (10%) of the ten percent (10%) penalty for all delinquent taxes. This fee shall be added to the total amount due, and shall be paid by the person paying the tax claim if payment is made to the sheriff, or the certificate of delinquency or personal property certificate of delinquency if payment is made after the tax claim has been filed with the county clerk.*

➔Section 4. KRS 134.450 is amended to read as follows:

- (1) *Notwithstanding any other provision of KRS Chapter 134 to the contrary:*
- (a) *The provisions of subsection (4) of this section shall apply to the purchase and sale of delinquent tax claims and certificates of delinquency related to assessments made in calendar year 2008; and*
  - (b) *All provisions of KRS Chapter 134 not in conflict with the provisions of subsection (4) of this section shall continue to apply for assessments made in calendar year 2008.*
- (2) *Except as provided in subsection (4) of this section, the sheriff shall sell all tax claims for which payment by the delinquent taxpayer has not been made by the closing date for the acceptance by the sheriff of offers to purchase delinquent tax claims. If there is more than one (1) willing purchaser who has made an offer, the one having made the most recent purchase of a tax claim against the same delinquent or the same property shall have preference; if there is no such person, the person being the first, in the judgment of the sheriff, to offer to pay cash in the full amount of the tax claim shall receive priority for the purchase of the tax claim. If the total of all offers to purchase exceeds ten percent (10%) of the total dollar amount of the delinquent bills offered for sale, or the sum of two hundred thousand dollars (\$200,000), whichever is less, the sheriff shall notify the Finance and Administration Cabinet of the offers of purchase within five (5) business days of the closing date when the offers were received. Upon receipt of the notice, the Finance and Administration Cabinet shall purchase the delinquent tax bills upon which the sheriff has received an offer of purchase and shall tender payment to the sheriff within fifteen (15) business days of the receipt of the sheriff's notice. Upon purchase of the tax claims, the state shall be the owner of the tax bills and may contract with the county attorney to collect all amounts due on its behalf under the terms and conditions of the county attorney's contract with the Department of Revenue to collect delinquent taxes. If the county attorney has not contracted with the Department of Revenue to collect delinquent taxes, the Department of Revenue shall collect all amounts due on behalf of the Finance and Administration Cabinet. If the Finance and Administration Cabinet does not purchase all of the delinquent tax bills, within fifteen (15) days of the closing date, the sheriff shall complete the sale of those tax claims for which the sheriff has received responsible offers to purchase. When a sale is made the tax bill shall be known as a certificate of delinquency and the sheriff shall inscribe thereon the date of sale, the sale price, and the name and address of the purchaser, in the place and manner prescribed by the Department of Revenue, and the purchaser shall be entitled to a certified copy of the certificate of delinquency.*

- (3)~~(2)~~ If no responsible offer in the amount of the tax claim is received, the sheriff shall purchase it for the state, county, and taxing districts having an interest in the tax claim. In such case, the tax bill shall also be known as a certificate of delinquency, and the sheriff shall inscribe thereon the same information required when one other than the state, county, or taxing district is the purchaser. ~~(3)~~The sheriff shall file all **delinquent tax claims**~~[certificates of delinquency]~~ in the county clerk's office immediately upon completion of the tax sale~~, or in a county containing a city of the first class or consolidated local government, within fourteen (14) working days of the sale]~~, and the clerk shall retain them.
- (4) (a) 1. *In a consolidated local government, the sheriff's sale required by subsection (2) of this section shall not be held, and the sheriff shall not purchase the bills on behalf of the taxing jurisdictions as required by subsection (3) of this section. Instead, within fourteen (14) working days of April 15, the sheriff shall file all delinquent tax claims in the county clerk's office.*
2. *In all other counties, the sheriff's sale required by subsection (3) of this section may be suspended upon approval of the governing body of the county and agreement of the county clerk and sheriff. The governing body of the county seeking to suspend the sheriff's sale shall adopt a resolution or an ordinance approving suspension of the sale upon certification from the county clerk and the sheriff that his or her office has the capacity to accommodate the suspension of the sale, and that the recordkeeping system for his or her office has or will be updated in sufficient time to address the additional reporting duties and requirements resulting from the suspension of the sale. Upon suspension of the sheriff's sale pursuant to this subparagraph, the chief executive of the county shall notify the department, and the sheriff shall, on April 15, or by the fifteenth day of the fourth month after the taxes become due under an alternative collection schedule, file all delinquent tax claims in the county clerk's office.*
- (b) *If the sheriff's sale is suspended under paragraph (a) of this subsection, the sheriff shall receive his or her compensation as provided in KRS 134.290, any compensation he or she is entitled to for the collection of school district taxes, and any amount he or she is entitled to for collecting taxes for any other taxing districts, as well as the additional compensation provided by KRS 134.430, whether the taxes are collected by the sheriff prior to the filing of the tax claims with the county clerk pursuant to this subsection or by the county clerk after the tax claims are filed and become certificates of delinquency. The amount due the sheriff on delinquent tax claims shall be included by the sheriff as part of the delinquent tax claims filed with the county clerk, shall become part of the certificate of delinquency, and shall be paid by the person paying the certificate of delinquency.*
- (c) *Upon filing with the county clerk, the tax claims shall become certificates of delinquency, and the department, rather than the sheriff, shall be responsible for the collection of taxes related thereto.*
- (d) 1. *The county clerk shall conduct a sale of the certificates of delinquency in accordance with guidance provided by the department. No person other than the delinquent taxpayer may pay a certificate of delinquency prior to the sale.*
2. *The guidance shall establish a fair process that allows all persons seeking to participate in the sale an equal opportunity to do so.*
3. *Preference in purchasing a certificate of delinquency shall be given to the holder of a certificate of delinquency from a prior year on the same property. If more than one (1) third party holds an outstanding certificate of delinquency from a prior year, the person holding the certificate of delinquency for the most recent tax year shall be given preference.*
- (e) *The county clerk, rather than the sheriff, shall advertise the sale as required by KRS 134.440 and shall receive for those services the compensation provided in KRS 134.440(2).*
- (5) The county clerk shall acknowledge receipt of the **delinquent tax claims**~~[certificates]~~ by signing a receipt form that has been prepared in a manner prescribed by the department~~[of Revenue]~~.
- (6) If the sheriff fails to file the **delinquent tax claims**, ~~the sheriff~~~~[certificates, he]~~ shall be liable on his *or her* official bond for the aggregate amount of the **delinquent tax claims not filed with the county clerk**~~[certificates not returned, but the claim of the purchaser shall not be affected by this neglect. If the sheriff fails to return any certificate, the purchaser may file his certified copy with the clerk, with the same effect as the original]~~.

~~(7)(4)~~ The clerk shall make, execute, and deliver a certified copy of a certificate of delinquency to the payor, or the clerk may provide for a certified electronic register of the certificates of delinquency in the clerk's record in lieu of delivering a certified copy of the certificate of delinquency.

~~(8)(5)~~ The certificate of delinquency is assignable by endorsement. The clerk shall note the assignment on the certificate of delinquency or the clerk may provide for a certified electronic certificate of delinquency in the clerk's records in lieu of delivering a certified copy of the certificate of delinquency. An assignment when noted on the record in the office of the county clerk vests in the assignee all rights and title of the original purchaser.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 134 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Upon receipt of a written request by a person who pays taxes on behalf of another to be treated as a transferee and verification that the request meets the requirements of subsection (3)(d) or (e) of Section 3 of this Act, the sheriff shall issue a certificate of transfer in accordance with the provisions of this section.*
- (b) 1. *Any person making a request and having taxes paid on his or her behalf under this section; and*
2. *The heirs and assigns of the person;*
- shall be estopped from claiming any irregularity in the tax or any proceedings related to the tax prior to the time of transfer.*
- (2) *The sheriff shall give a certificate of transfer to the person making the payment. The certificate of transfer shall specify the:*
- (a) *Sheriff's name;*
- (b) *County where the property is located;*
- (c) *Address of the property;*
- (d) *Amount paid;*
- (e) *Name of the person making the payment;*
- (f) *Account the payment was credited to; and*
- (g) *Person in whose name the property is listed as of January 1.*
- (3) *A transferee shall be subrogated to the lien provided for in Section 18 of this Act, and shall have the same rights and powers of enforcing collection as provided in subsection (2) of Section 16 of this Act.*
- (4) *The holder of a certificate of transfer shall have the certificate of transfer required by subsection (2) of this section entered on the record of encumbrances on real estate of the county in which the certificate was issued. Failure to enter the certificate of transfer shall result in a loss of the lien upon the property, if the property is transferred in good faith and for valuable consideration before recording and without notice of the existence of the certificate of transfer. The county clerk may charge a fee pursuant to Section 56 of this Act for the recording and release of a certificate of transfer.*
- (5) *When a transferee has acquired a certificate of transfer that is for any reason invalid, the state, county, city, or taxing district that received payment shall reimburse the transferee by paying to him or her the amount of principal, interest, penalties, and costs expended by him or her in the purchase.*
- (6) (a) *Any person holding a lien upon property covered by a certificate of transfer may, at any time during the life of the certificate if there has been no sale of property for taxes, cancel the certificate by paying to the last recorded owner of the certificate of transfer, or to his or her order, the amount of the certificate and interest, at the tax interest rate established by KRS 131.183 from the date of the certificate.*
- (b) *If both real and personal property are covered by one (1) certificate of transfer, the holder of a lien on any item of the property may obtain a cancellation of the lien on the certificate of transfer against the property on which he or she has a lien by paying to the last recorded owner of the certificate of transfer, before a tax sale under a certificate of delinquency, the amount applicable to the personal*

*property included in the tax referred to by the certificate of transfer, plus the pro rata part of the face value of the certificate of transfer applicable to the property on which release is desired, plus interest on the amount of the certificate of transfer at the tax interest rate established by KRS 131.183.*

- (c) *If two (2) or more items of property are included in one (1) certificate of transfer, the transferee may release any item or items. The release shall not affect the lien of the certificate of transfer on the remaining items, but shall be a release only to the extent of the amount of taxes applying to the parcel or parcels released.*
- (d) *The provisions of law that apply to the rights of the owner of land sold for taxes by the state, county, city, or taxing district shall also apply to the owner's rights under sales of land made to satisfy a certificates of transfer, and the owner of the land or his or her heirs or assigns may redeem the property within the same length of time, and upon the same terms, as are provided by law for redeeming property sold for taxes.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 134 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *The sheriff shall, on April 15 or three (3) months and fifteen (15) days from the date the taxes were due under an alternative collection schedule, file all tax claims on real and personal property remaining in his or her possession with the county clerk, except that in a consolidated local government the sheriff shall have fourteen (14) working days from the required filing date to file the delinquent tax claims with the county clerk.*
- (b) *The content of the information provided by the sheriff to the county clerk shall be determined by the department through the promulgation of an administrative regulation.*
- (c) *The county clerk shall acknowledge receipt of the tax claims by providing the sheriff with a receipt in the format required by the department.*
- (d) *If the sheriff fails to file the tax claims as required by this subsection, the sheriff shall be liable on his or her bond for the aggregate amount of the tax claims not filed with the clerk.*
- (2) (a) *Upon filing with the county clerk, a real property tax claim shall become a certificate of delinquency and a personal property tax claim shall become a personal property certificate of delinquency, and the department, rather than the sheriff, shall be responsible for the collection of all amounts due in accordance with Section 12 of this Act.*
- (b) *Certificates of delinquency and personal property certificates of delinquency filed with the county clerk are owned by the taxing jurisdictions whose taxes are included as part of the certificate of delinquency or personal property certificate of delinquency.*
- (c) *The clerk shall accept payment for certificates of delinquency as provided in Sections 8 and 9 of this Act.*
- (d) *A certificate of delinquency or personal property certificate of delinquency shall include:*
  - 1. *The face amount of the tax due;*
  - 2. *The ten percent (10%) penalty as provided in Section 2 of this Act;*
  - 3. *The sheriff's commission and the ten percent (10%) sheriff's add-on as provided in Section 3 of this Act; and*
  - 4. *Any advertising costs incurred by the county as provided in Section 3 of this Act.*
- (e) *The certificate of delinquency or personal property certificate of delinquency shall be prima facie evidence that:*
  - 1. *The property represented by the certificate of delinquency or personal property certificate of delinquency was subject to the taxes levied thereon, and that the property was assessed as required by law;*
  - 2. *The tax claim was valid and correct in all respects; and*
  - 3. *The taxes were not paid any time before the establishment of the certificate of delinquency or personal property certificate of delinquency.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 134 IS CREATED TO READ AS FOLLOWS:

- (1) *A certificate of delinquency or personal property certificate of delinquency shall bear simple interest at twelve percent (12%) per annum calculated on the base amount established by subsection(2)(d) of Section 6 of this Act from the date it is established until paid. A fraction of a month shall be counted as an entire month.*
- (2) *If a certificate of delinquency is paid by a third-party purchaser, the amount paid by the third-party purchaser shall become the base amount upon which interest is calculated from the date of purchase until paid.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 134 IS CREATED TO READ AS FOLLOWS:

- (1)
  - (a) *The county clerk shall receive and record payments for all certificates of delinquency and personal property certificates of delinquency filed by the sheriff pursuant to Section 6 of this Act.*
  - (b) *The county clerk may accept payment by any commercially acceptable means. The county clerk may limit the acceptable methods of payment to those that ensure that the payment cannot be reversed or nullified due to insufficient funds.*
- (2) *The county clerk shall give a receipt to the person making payment.*
- (3) *The county clerk shall report by the tenth day of each month to the department, the county treasurer, the sheriff, and the proper officials of the taxing districts. The governing body of a county may require the county clerk to report and pay on a more frequent basis if necessary for bonding requirements; however, the county clerk shall not be required to report and pay more frequently than weekly.*
- (4) *The county clerk shall allocate payments among the various entities entitled to a portion of the payment. The county clerk shall, at the time he or she makes the reports required by subsection (3) of this section:*
  - (a) *Pay to the department for deposit in the State Treasury all moneys received due the state;*
  - (b) *Pay to the county treasurer all moneys received due the county;*
  - (c) *Pay to the authorized officers of the taxing districts the amount due each taxing district; and*
  - (d) *Pay the amount of fees, costs, commissions, and penalties to the persons, agencies, or parties entitled thereto.*
- (5)
  - (a) *Upon full payment of a certificate of delinquency or personal property certificate of delinquency owned by the state, county, and taxing districts, the county clerk shall note on the certificate the name and address of the person making the payment, the amount paid, and any other information the department may require. The clerk shall mark the certificate of delinquency or personal property certificate of delinquency paid in full.*
  - (b) *If payment in full is made by a person other than the person primarily liable on the certificate, the person making the payment may request that the payment be treated as an assignment. Upon such request, the county clerk shall:*
    1. *Note the assignment on the certificate of delinquency or personal property certificate of delinquency;*
    2. *Record the encumbrance represented by the certificate of delinquency in the same manner as a notice of lis pendens; and*
    3. *Include as part of the encumbrance recording the information required by subsection (3)(c) of Section 15 of this Act.*

*For recording the assignment and encumbrance, the county clerk shall receive the fee provided in Section 56 of this Act.*
  - (c) *If a person other than the person primarily liable on the certificate does not request the payment to be treated as an assignment, he or she shall be treated in the same manner as the person primarily liable on the certificate, and any payment made pursuant to this subsection shall not constitute an assignment of the certificate. The payor shall not be subrogated to the lien of the state, county, and taxing districts as provided in subsection (8) of this section, and shall not be considered a third-party purchaser under the provisions of this chapter, or a transferee under Section 5 of this Act.*

- (6) *After the initial recording of an assignment of a certificate of delinquency or personal property certificate of delinquency as provided in subsection (5)(b) of this section, all subsequent actions relating to that certificate of delinquency or personal property certificate of delinquency, including assignments and releases shall be made in accordance with the general laws and procedures governing land records, except the additional information required by subsection (3)(c) of Section 15 of this Act shall be included. The applicable fees established by Section 56 of this Act shall apply.*
- (7) *A certificate of delinquency or personal property certificate of delinquency shall be assignable. Failure of an assignee to record the assignment shall render the claim of such person to any real estate represented thereby inferior to the rights of other bona fide purchasers, payors, or creditors.*
- (8) *Any person other than the person primarily liable on a certificate who:*
- (a) *Pays the certificate of delinquency in full, and who requests to the county clerk that the payment be treated as an assignment pursuant to subsection (5)(b) of this section; or*
  - (b) *Is the assignee of such a person, if the assignment has been recorded as required by this section or Section 9 of this Act;*

*shall be subrogated to the lien priority of the state, county, and taxing districts as provided in Section 18 of this Act, and the amount due may be collectible as provided in subsection (2) of Section 16 of this Act.*

- (9) *As compensation for collection of payments on certificates of delinquency, personal property certificates of delinquency, and other delinquent taxes, and the processing of delinquent property tax payments, the county clerk shall be paid ten percent (10%) of the amount due each taxing unit for each certificate of delinquency, personal property certificate of delinquency, or other delinquent tax claim. The fee shall be added to the amount of the tax claim and shall be paid by the person paying the tax claim.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 134 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *The following persons may pay to the county clerk at any time the total amount due on a certificate of delinquency or personal property certificate of delinquency that is owned by the taxing jurisdictions and in the possession of the county clerk. It shall be the responsibility of the person seeking to pay the county clerk to provide sufficient proof to the county clerk that he or she meets the requirements to pay under this paragraph. The county clerk shall be held harmless if he or she relies upon information provided and accepts payment from a person not qualified to pay under this paragraph. The county clerk may also accept partial payments from these persons:*
1. *The person primarily liable on the certificate of delinquency or personal property certificate of delinquency, or a person paying on behalf of the person primarily liable on the certificate, provided that a person paying on behalf of the person primarily liable on the certificate under this paragraph shall, notwithstanding the provisions of subsection (5) of Section 8 of this Act, be treated in the same manner as the person primarily liable on the certificate and shall not be treated as an assignee or a transferee under the provisions of this chapter; and*
  2. *The following persons may pay a certificate of delinquency or personal property certificate of delinquency that relates to the specific property in which he or she has an interest, other than a person whose only interest in the property is an interest resulting from a prior year certificate of delinquency:*
    - a. *Any person having a legal or equitable estate in real property subject to a certificate of delinquency;*
    - b. *A tenant or lawful occupant of real property, or a bailee or person in possession of any personal property; or*
    - c. *Any person having a mortgage on real property or a security interest in real or personal property.*

*Upon full payment of a certificate of delinquency, under this subparagraph, the provisions of subsections (5), (6), (7), and (8) of Section 8 of this Act shall apply regarding the rights and interests of the person making the payment.*

- (b) *Any other person may pay the total amount due on a certificate of delinquency that is owned by the taxing jurisdictions and in the possession of the county clerk to the county clerk after ninety (90)*

days have passed from the filing of the tax claims with the county clerk in accordance with the provisions of Section 10 of this Act.

- (c)
  1. *Only the persons listed in paragraph (a) of this subsection may pay a personal property certificate of delinquency, or a certificate of delinquency on unmined coal, oil, or gas reserves, or any other mineral or energy resources that are assessed separately from the surface real property pursuant to KRS 132.820. Personal property certificates of delinquency and certificates of delinquency on unmined coal, oil, or gas reserves shall not be included in any sale conducted under Section 10 of this Act, and may not be purchased by any third party not specifically listed in paragraph (a) of this subsection.*
  2. *A certificate of delinquency on property of a public service company that is centrally assessed, and that includes personal property and real property on the same certificate of delinquency, shall be treated for all purposes as a certificate of delinquency on real property.*
- (2) *The duties of the county clerk with regard to payment of a certificate of delinquency or personal property certificate of delinquency by a person other than the person primarily liable on the certificate, are set forth in subsections (5) and (6) of Section 8 of this Act.*
- (3)
  - (a) *The delinquent taxpayer or any person having a legal or equitable estate in the property covered by a certificate of delinquency may, at any time, pay the total amount due to a third-party purchaser of a certificate of delinquency. The third-party purchaser may also accept payment from any other person at any time.*
  - (b) *When full payment for a certificate of delinquency is made to a third-party purchaser, the third-party purchaser shall execute a release of the lien in accordance with the provisions of KRS 382.365. The remedies included in KRS 382.365 shall apply if the third-party purchaser fails to release the lien as provided in KRS 382.365.*
  - (c) *Any person other than the person primarily liable on a certificate of delinquency who pays a certificate of delinquency to a third-party purchaser may, by paying a fee pursuant to Section 56 of this Act, have the county clerk record the payment, and the recordation shall constitute an assignment thereof, and the provisions of subsections (6) and (8) of Section 8 of this Act shall apply. Failure of an assignee to record the assignment shall render the claim of such person to any real estate represented thereby inferior to the rights of other bona fide purchasers, payors, or creditors.*
  - (d) *If the third-party purchaser fails to release the lien in accordance with the provisions of KRS 382.365, or to surrender the certified copy of the certificate of delinquency to the person making full payment within thirty (30) days after payment has been tendered at the mailing address designated in the notice required by Section 15 of this Act or the mailing address of record in the county clerk's office if no notice has been provided as required by Section 15 of this Act, the person making the payment shall have all of the remedies provided in KRS 382.365.*
  - (e)
    1. *A person entitled to make payment under this section who is having difficulty locating the third-party purchaser of the certificate of delinquency to make payment may send a registered letter addressed to the third-party purchaser of record at the address reflected in the most recent notice received from the third-party purchaser pursuant to Section 15 of this Act, or if no notice has been received, at the address reflected in the records of the county clerk, indicating a desire to make payment. If the letter is returned by mail unclaimed, or if the third-party purchaser fails to respond in writing within thirty (30) days, the sender may take to the county clerk as proof of mailing the certified mail receipts stamped by the post office showing that the certified letter was mailed to the correct address and the date it was mailed. If the letter was returned, the sender shall also provide the returned letter to the clerk. The sender shall attest under oath that the letter was mailed to the correct address, and if the letter was not returned, the attestation shall also provide that the third-party purchaser did not respond in writing within thirty (30) days of the date the letter was mailed. The department shall develop attestation forms for distribution to the county clerks that include a notice that any false statement made in the attestation shall be punishable by law. The form shall be a public record under KRS 519.010(2), subject to KRS 519.060(1)(a). The clerks' taking of such testimony shall be an official proceeding under KRS 523.010(3).*

2. *Upon the acceptance of proof and attestation by the county clerk that the person has failed in his or her attempt to contact the third-party purchaser about making payment, the person may pay the full amount due as reflected in the records maintained by the county clerk plus applicable interest, and the county clerk shall make the necessary assignment or release of the certificate of delinquency.*
  3. *The county clerk shall deposit the money paid in an escrow account for this specific purpose in a bank having its deposits insured with the Federal Deposit Insurance Corporation. The name of the bank in which the money is deposited shall be noted on the certificate of delinquency. The county clerk may maintain one (1) escrow account for all deposits made pursuant to this subparagraph and shall maintain a record reflecting the amount due each owner of a certificate of delinquency.*
  4. *The county clerk may deduct the sum of twenty dollars (\$20) as a fee for such service.*
  5. *The county clerk shall mail a copy of the certificate of delinquency by regular mail to the third-party purchaser of record at the address on the certificate of delinquency.*
  6. *If any county clerk fails to pay to the person entitled thereto, upon written demand clearly identified as a demand for payment, the money received in payment of a certificate of delinquency, the county clerk and the county clerk's sureties shall be liable for the amount of the payment and twenty percent (20%) interest thereon annually from the fifteenth day after the time the county clerk received the written demand until paid.*
- (4) *Copies of the records provided for in this section and Section 8 of this Act, when certified by the county clerk, shall be evidence of the facts stated in them in all the courts of this state.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 134 IS CREATED TO READ AS FOLLOWS:

- (1) *The sale of certificates of delinquency by county clerks to persons other than those listed in paragraph (a) of subsection (1) of Section 9 of this Act shall be conducted in accordance with the provisions of this section.*
- (2) *The department shall promulgate administrative regulations to establish a process for the purchase and sale of certificates of delinquency to third parties. The process developed by the department shall:*
  - (a) *Establish an annual statewide schedule for the sale of certificates of delinquency in each county. The schedule shall be published on the department's web site at least ten (10) days prior to the first sale. The sale in each county shall be administered by the county clerk and shall be scheduled at least ninety (90) days but not more than one hundred thirty-five (135) days after the unpaid tax claims are filed by the sheriff with the county clerk. The department may stagger the schedule so that sales are conducted on different dates and times in different counties;*
  - (b) *Except as provided in paragraph (a) of subsection (1) of Section 9 of this Act, prohibit the payment of any newly filed certificates of delinquency by a third-party prior to the scheduled annual sale of certificates of delinquency for that year for that county;*
  - (c) *Prohibit the payment of any certificates of delinquency known to be involved in litigation or for which a payment plan has been agreed to by the taxpayer and the county attorney or the department, and on which the payment agreement is in good standing;*
  - (d) *Establish a process to be used by county clerks in determining the order in which interested third-party purchasers may select and pay available certificates of delinquency. The process shall, at a minimum:*
    1. *Be uniform in all counties to the extent practicable;*
    2. *Establish a process, if there is more than one (1) purchaser registered to purchase certificates of delinquency at the sale, that allows all interested purchasers an opportunity to purchase certificates of delinquency on an equitable basis. The sale shall not be structured in such a manner to allow one (1) third party to purchase all of the certificates of delinquency if there are other properly registered third parties that are also interested in purchasing certificates of delinquency;*
    3. *Establish fairness for all participants by prohibiting the participation of multiple related entities, or multiple individuals representing related interests as separate entities in the*

*selection process. The department shall define "related entities" and "related interests" as part of the regulatory process; and*

4. *Allow any person holding a certificate of delinquency from a prior year to pay a certificate of delinquency on the same property for the current year. If more than one (1) third party holds an outstanding certificate of delinquency on a parcel of property, the person holding a certificate of delinquency from the most recent tax year shall be given preference.*
- (e) *Require all potential participants in the sale to register at least one (1) week in advance with the county clerk;*
- (f) *Require a review of the list of registered participants, either by the county clerk or the department, prior to the sale to ensure that:*
  1. *All registered participants seeking to pay multiple certificates of delinquency are properly registered with the department as required by Section 11 of this Act; and*
  2. *No registered participants or related entities or related interests prohibited from separate participation in the sale pursuant to the provisions of paragraph (d)2. of this subsection and the administrative regulations promulgated thereunder;*
- (g) *Establish advance deposit requirements for registered participants based upon the maximum amount the registered participant may pay for desired certificates of delinquency;*
- (h) *Establish a registration fee to be paid to the clerk upon registration for a sale. The registration fee paid to each county shall not exceed two hundred fifty dollars (\$250) and may be tiered;*
- (i) *Establish payment requirements, which may include nullification of the payment and forfeiture of the advance deposit if a third-party purchaser fails to produce full payment within the specified time; and*
- (j) *Establish payment methods.*
- (3) *Any person who, in any calendar year:*
  - (a) *Pays or plans to pay five (5) or more certificates of delinquency statewide;*
  - (b) *Pays or plans to pay three (3) or more certificates of delinquency in any county; or*
  - (c) *Invests or plans to invest more than ten thousand dollars (\$10,000) in the payment of certificates of delinquency on a statewide basis in any calendar year;*

*shall register with the department annually as provided in Section 11 of this Act.*
- (4) *The department shall be responsible for monitoring the sale of certificates of delinquency.*
- (5) (a) *At least thirty (30) but not more than forty-five (45) days before the scheduled sale date, the county clerk shall cause a notice to be published in accordance with the provisions of KRS Chapter 424. The notice shall list by property owner, property address, and if available, parcel number or lot number, all certificates of delinquency available for sale. The notice shall provide the date, time, and location of the sale.*
  - (b) *As compensation for advertising the sale, the county clerk shall receive five dollars (\$5) for each certificate of delinquency advertised. The fee shall be added to the amount of the certificate of delinquency and shall be paid by the person paying the certificate of delinquency.*
  - (c) *The cost of placing the advertisement shall be paid by the county. The cost shall be added to the amount of the certificate of delinquency and shall be paid by the person paying the certificate of delinquency. The department shall establish a formula that may be used by counties in allocating the advertising costs among the delinquent tax claims. The formula shall take into account that a percentage of delinquent tax claims remains unpaid.*
- (6) *Any certificate of delinquency not paid at the annual sale, not subject to a payment plan with the department or county attorney, not known to be in litigation, and not related to unmined coal, oil, and gas reserves may be paid to the county clerk at any time by any person after the sale, provided that any person*

*required by the provisions of Section 11 of this Act to register with the department shall hold a current certificate of registration at the time of purchase.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 134 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person who, in any calendar year:*
- (a) *Pays or plans to pay directly, indirectly, or through another or others, five (5) or more certificates of delinquency statewide;*
  - (b) *Pays or plans to pay directly, indirectly, or through another or others, three (3) or more certificates of delinquency in any county; or*
  - (c) *Invests or plans to invest directly, indirectly, or through another or others, more than ten thousand dollars (\$10,000) in the payment of certificates of delinquency on a statewide basis in any calendar year;*
- shall register with the department annually.*
- (2) *The person shall hold a certificate of registration from the department prior to the payment of any certificate of delinquency that results in the person owning more than five (5) certificates of delinquency statewide, more than three (3) certificates of delinquency in any county, or investing more than ten thousand dollars (\$10,000) in the payment of certificates of delinquency statewide in a calendar year.*
- (3) *The department shall promulgate administrative regulations to establish registration requirements and an application process, which may include the imposition of an administrative fee to offset the cost of processing and reviewing the application.*
- (4) *As part of the application process, the department may require that the applicant and any of its directors, officers, members, and managers:*
- (a) *Are current and in good standing on all taxes owed to the Commonwealth;*
  - (b) *Are in good standing with regard to operations under a previously issued certificate of registration;*
  - (c) *Have not previously operated without obtaining a certificate of registration under this section under circumstances where he or she should have registered; and*
  - (d) *Have a satisfactory record with the Office of Consumer Protection within the Office of the Attorney General. What constitutes a satisfactory record shall be determined by the department through the promulgation of an administrative regulation.*

*Any applicant failing to meet one (1) or more of these requirements may be denied a certificate of registration.*

- (5) (a) *The department may decline to issue a certificate of registration to any applicant who does not meet the requirements established by this chapter and the administrative regulations promulgated thereunder.*
- (b) *The department may suspend or revoke a certificate of registration if the person holding the certificate violates the provisions of this chapter or the administrative regulations promulgated thereunder.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 134 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall be responsible for the collection of certificates of delinquency and personal property certificates of delinquency. The provisions of this section relating to certificates of delinquency shall also apply to personal property certificates of delinquency unless otherwise specifically noted. The department shall offer the collection duties related to certificates of delinquency and personal property certificates of delinquency to the county attorney in each county, unless the department determines that a county attorney has previously failed to perform collection duties in a reasonable and acceptable manner.*
- (2) *Any county attorney desiring to perform the collection duties shall enter into a contract with the department on an annual basis.*
- (3) *The terms of the contract shall specify the duties to be undertaken by the county attorney, which shall include, at a minimum, the duties set forth in subsection (4) of this section. The terms of the contract shall*

*also provide that, if the county attorney fails to perform the duties required by the contract during the contract period, the department may assume all collection responsibilities.*

- (4) *The following duties shall be performed by the department or the county attorney, as the case may be, with regard to each certificate of delinquency:*
- (a) *Within thirty (30) days after the establishment of a certificate of delinquency, the county attorney or the department shall mail a notice by regular mail to the owner of record on the assessment date at the address on the records of the property valuation administrator, or to the in-care-of address if an in-care-of address is provided as required by subsection (5) of this section. The notice shall:*
1. *Include the name, address, and telephone number of a contact person in the county attorney's office or the department, as the case may be;*
  2. *Advise that:*
    - a. *The certificate of delinquency is a lien of record against the property on which the taxes are due;*
    - b. *The amounts due are a personal obligation of the taxpayer on the assessment date; and*
    - c. *The certificate bears interest at the rate of twelve percent (12%) and, if not paid, will be subject to collection by the county attorney or the department as provided by law;*
  3. *Include the total amount due as of the date of the notice;*
  4. *Advise that anytime after ninety (90) days from the creation of the certificate of delinquency, the certificate of delinquency may be paid by a third-party purchaser and, that if so paid, the certificate of delinquency will be subject to collection by the third-party purchaser as provided by law. The notice shall also advise that a third-party purchaser may impose substantial additional administrative costs and fees associated with collection in addition to the amount due on the certificate of delinquency. This provision shall not be included in notices sent for personal property certificates of delinquency, or certificates of delinquency on unmined coal, oil or gas reserves, or any other mineral or energy resources that are assessed separately from the surface real property pursuant to KRS 132.820; and*
  5. *Advise that the taxpayer may qualify for a payment plan with the county attorney or the department, if the taxpayer meets the requirements established by the county attorney or the department, and if terms are agreed to prior to the date of the sale.*
- (b) *The county attorney or the department shall file in the office of the county clerk a list of the names and addresses to which the thirty (30) day notice was mailed along with a certificate attesting that the notices were mailed in accordance with the requirements of this section.*
- (c) *1. All thirty (30) day notices returned as undeliverable shall be submitted by the county attorney or department to the property valuation administrator, and a list of the returned notices shall be filed with the county clerk, who shall record the list in the order book of the county.*
- 2. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner, current mailing address, and in-care-of address, if, any, as provided in KRS 382.135.*
- 3. The property valuation administrator shall return the notices with the corrected information to the county attorney or the department within twenty (20) days of receipt.*
- 4. Upon receipt of the new information from the property valuation administrator, the county attorney or the department shall resend the notice required by paragraph (a) of this subsection using the updated information.*
- (d) *1. Within sixty (60) days of the establishment of a certificate of delinquency, the county attorney or department shall send a second notice, by regular mail, to owners of record whose tax bills remain delinquent, or to the in-care-of addresses or corrected address, if information regarding a new property owner has been received by the county attorney or the department under the provisions of paragraph (c) of this subsection. The notice shall include, at a minimum, the following information:*

- a. *The name, address, and telephone number of a contact person in the county attorney's office or the department, as the case may be;*
  - b. *A statement that a sale of tax claims will be held by the county clerk on the date established by the department for the sale. The text of the statement shall include the actual sale date, as well as a statement noting that the certificate of delinquency may be paid by a third-party purchaser at the sale, and if the certificate of delinquency is paid by a third-party purchaser, it will be subject to collection by the third-party purchaser as provided by law, and that significant additional collection fees will be imposed by the third-party purchaser. This statement shall not be included in notices sent to owners of property subject to a personal property certificate of delinquency, or certificates of delinquency on unmined coal, oil or gas reserves, or any other mineral or energy resources that are assessed separately from the surface real property pursuant to KRS 132.820; and*
  - c. *A statement that the taxpayer may qualify for a payment plan with the county attorney or the department, if the taxpayer meets the requirements established by the county attorney or the department and if terms are agreed to prior to the date of the sale.*
2. *The county attorney or the department shall file in the office of the county clerk a list of the names and addresses to which the sixty (60) day notice was mailed, along with a certificate attesting that the notices were mailed in accordance with the requirements of this section.*
  3. *If the notice required by paragraph (c) of this subsection is returned as undeliverable, and the property valuation administrator is not able to provide a corrected or updated address, the county attorney or the department shall address the sixty (60) day notice to "Occupant" and shall mail the notice to the address of the property to which the certificate of delinquency applies.*
- (e) *The county attorney or the department shall deliver to the property valuation administrator, at the same time the notice required by paragraph (d) of this subsection is sent, a list of the owners whose tax bills remain delinquent. The property valuation administrator shall review this list in accordance with the provisions of Section 36 of this Act to establish that the properties on the list can be identified and physically located.*
  - (f) *Anytime after the expiration of the one (1) year tolling period established by Section 16 of this Act, the county attorney or department may institute an action to collect the amount due on a certificate of delinquency owned by the taxing jurisdictions and in the possession of the county clerk. At least forty-five (45) days before instituting a legal action, the county attorney or department shall send, by regular mail, a notice of intent to initiate legal action to enforce the lien. The notice shall be sent to the owner of record of the property or to the in-care-of address or corrected address if either has been provided pursuant to this section.*
- (5) *If property subject to a certificate of delinquency has been transferred in any year after the assessment date, the property valuation administrator shall determine the in-care-of address supplied in the deed pursuant to KRS 382.135 and shall provide that information to the county attorney or the department.*
  - (6)
    - (a) *Failure of the county attorney or the department to mail the notices required in subsection (4) of this section shall not affect the validity of the claim of the state, county, school district, and taxing district. However, the county attorney or the department shall not receive any compensation, commission, or payment related to any certificate of delinquency for which the notices required by the provisions of subsection (4) of this section are not sent.*
    - (b) *For each notice mailed, one dollar (\$1) shall be added to the amount of the certificate of delinquency, to offset the cost of mailing, and, upon collection, the county attorney or the department shall be paid such amounts as reimbursement for mailing costs.*
  - (7)
    - (a) *As compensation for the collection duties performed pursuant to a contract with the department, a county attorney shall be paid twenty percent (20%) of the amount due each taxing unit during the contract period, whether the amount is paid voluntarily, through sale, or under court order, and whether the amount is paid to the county clerk or the county attorney. The fee for the county attorney shall be added to the amount of the certificate of delinquency and shall be paid by the person paying the certificate of delinquency.*

- (b) *If payment in full is voluntarily made by the taxpayer to the county attorney or county clerk within five (5) days of the filing of the tax claim with the county clerk, the county attorney fee shall be waived.*
- (c) *If a county attorney files a court action or files a cross-claim, the county attorney shall be paid an additional fee of thirteen percent (13%) of the amount of the certificate of delinquency and shall be reimbursed for costs incident to the court action. The additional fee and costs incident to the litigation shall be added to the certificate of delinquency and shall be paid by the person paying the certificate of delinquency.*
- (d) *If more than one (1) county attorney renders necessary services to collect on a certificate of delinquency, the county attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the fee.*
- (8) (a) *The county attorney shall establish a system to accept installment payments from delinquent taxpayers. The county attorney may, during the contract period, enter into an agreement with a delinquent taxpayer to accept installment payments on the certificates of delinquency. The agreement shall not waive the county attorney's right to initiate court action or other authorized collection activities if the taxpayer does not make payments in accordance with the agreement.*
- (b) *The county attorney may, upon written request of the taxpayer for good cause and with agreement of the affected taxing jurisdiction or fee recipient, waive or reduce fees and penalties that are part of a certificate of delinquency during settlement or negotiation with a taxpayer in accordance with guidance provided by the department.*
- (9) *Any action by the county attorney authorized by this chapter shall be filed on relation of the commissioner. A copy of any judgment obtained by the county attorney shall be sent to the department.*
- (10) *The county attorney shall notify the county clerk and the department of the filing of a suit at the time the suit is filed and of payment agreements at the time such agreements are entered into. The county clerk shall note on the certificate of delinquency the filing of the lawsuit or the existence of the payment agreement, and these certificates of delinquency shall not be available for purchase or payment by a third-party purchaser. The county attorney shall notify the county clerk of the failure of any payment agreement and, upon notification to the clerk, the certificate of delinquency shall be available for purchase.*
- (11) *The department may make its delinquent tax collection databases and other technical resources, including but not limited to tax refund offsetting, available to the county attorney upon request from the county attorney. The county attorney seeking assistance shall enter into any agreements required by the department to protect taxpayer confidentiality, to ensure database integrity, or to address the concerns of the department.*
- (12) (a) *If a county attorney chooses not to contract for collection duties, or if a county attorney fails to perform the duties required by the contract, the department shall assume responsibility for all uncollected certificates of delinquency and personal property certificates of delinquency, including, at the option of the department, those with pending court action or for which the county attorney has entered into an installment payment agreement.*
- (b) *If the department assumes or retains responsibility for the collection of certificates of delinquency and personal property certificates of delinquency, the twenty percent (20%) fee that would have been paid to the county attorney under subsection (8) of this section, and any other fees or costs established by this section for the county attorney shall be paid to the department for deposit in the delinquent tax fund provided for under Section 26 of this Act.*

➔Section 13. KRS 134.545 is amended to read as follows:

Moneys paid to the county attorney under *an agreement entered into pursuant to Section 12 of this Act* ~~{KRS 132.350, 134.340, 134.400, 134.500, 134.540 and 135.040}~~ shall be used only for payment of county attorney office operating expenses.

➔Section 14. KRS 134.452 is amended to read as follows:

~~{(4)}~~ Notwithstanding any other provisions of this chapter, a *third-party* ~~{private}~~ purchaser of a certificate of delinquency shall be entitled to collect only the following:

- (1)~~(a)~~ The amount actually paid ~~for~~~~to purchase~~ the certificate of delinquency;
- (2)~~(b)~~ Interest *as provided in Section 7 of this Act, calculated on the amount actually paid to the county clerk from*~~accrued subsequent to~~ the date the certificate of delinquency was purchased *until paid; and*~~as provided in KRS 134.500;~~
- (3)~~(c)~~ Attorneys' fees as provided in this *subsection*~~paragraph~~.
- (a)~~1.~~ Attorneys' fees incurred for collection efforts prior to litigation as follows:
- 1.~~a.~~ If the amount paid for a certificate of delinquency is between five dollars (\$5) and three hundred fifty dollars (\$350), actual reasonable fees incurred up to one hundred percent (100%) of the amount of the certificate of delinquency, not to exceed three hundred fifty dollars (\$350);
  - 2.~~b.~~ If the amount paid for a certificate of delinquency is between three hundred fifty-one dollars (\$351) and seven hundred dollars (\$700), actual reasonable fees incurred up to eighty percent (80%) of the amount of the certificate of delinquency, not to exceed five hundred sixty dollars (\$560); and
  - 3.~~c.~~ If the amount paid for a certificate of delinquency is above seven hundred one dollars (\$701), actual reasonable fees incurred up to seventy percent (70%) of the amount of the certificate of delinquency, not to exceed seven hundred dollars (\$700).
- (b)~~2.~~ If a *third-party*~~private~~ purchaser is the owner of more than one (1) certificate of delinquency against the same taxpayer, actual and reasonable prelitigation attorneys' fees for all certificates of delinquency against the same taxpayer shall not exceed one and one-half (1.5) times the maximum amount permitted in ~~subparagraph 1. of this~~ paragraph (a) *of this subsection* for the largest tax bill owed by the taxpayer.
- (c)~~3.~~ In addition to the prelitigation attorneys' fees established by *paragraphs (a) and (b) of this subsection*~~subparagraphs 1. and 2. of this paragraph~~, a *third-party*~~private~~ purchaser may collect actual, reasonable attorneys' fees and costs that arise due to the prosecution of collection remedies or the protection of a certificate of delinquency that is involved in litigation; and
- (4)~~(d)~~ Administrative fees incurred for preparing, recording, and releasing an assignment of the certificate of delinquency in the county clerk's office, not to exceed one hundred dollars (\$100).
- (5) *A certificate of delinquency owned by a third-party purchaser shall be deemed a general intangible for the purposes of Article 9 of KRS Chapter 355.*
- ~~(2) A private purchaser holding a certificate of delinquency on June 26, 2007, shall, regardless of when that certificate of delinquency was purchased, send to the property owner by January 31, 2008, at the address reflected in the records maintained by the property valuation administrator, the following information:~~
- ~~(a) The legal name of the purchaser;~~
  - ~~(b) The purchaser's physical address;~~
  - ~~(c) The purchaser's mailing address for payments, if different from the physical address; and~~
  - ~~(d) The purchaser's telephone number.~~
- ~~(3) The provisions of KRS 132.490(1)(b), relating to notice if contact information changes, shall apply to all private purchasers of certificates of delinquency regardless of when the certificate of delinquency was purchased.~~
- ~~(4) Within ninety (90) days after the expiration of the one (1) year tolling period provided in KRS 134.470, the private purchaser shall send to the taxpayer by first class mail, with proof of mailing, a notice informing the taxpayer that the certificate of delinquency may be enforced as provided in KRS 134.490(2). The notices shall be sent to the address reflected in the records maintained by the property valuation administrator. The notice shall also include the contact information required by KRS 134.490(1)(b).~~
- ~~(5) Within thirty (30) days but at least fifteen (15) days prior to initiating any of the collection remedies enumerated in KRS 134.490(2), the private purchaser shall send to the taxpayer by first class mail, with proof of mailing, a notice informing the taxpayer that enforcement actions will be taken. The notices shall be sent to the address reflected in the records maintained by the property valuation administrator. The notice shall also include the contact information required by KRS 134.490(1)(b).~~

➔Section 15. KRS 134.490 is amended to read as follows:

- (1) Within fifty (50) days after the ~~delivery~~~~[issuance]~~ of a certificate of delinquency *by the clerk* to a *third-party purchaser, the third-party*~~[private purchaser, the private]~~ purchaser shall *send to the delinquent taxpayer by first-class mail with proof of mailing, a notice informing the delinquent taxpayer that the certificate of delinquency has been purchased by the third-party purchaser. The notice shall include the information required by subsection (3) of this section.*
- (2) *Anytime after the expiration of the one (1) year tolling period established by Section 16 of this Act, the third-party purchaser may institute an action to collect the amount due on a certificate of delinquency. At least forty-five (45) days before instituting a legal action, the third-party purchaser shall send to the taxpayer by first-class mail with proof of mailing, a notice informing the taxpayer that enforcement action will be taken. This notice shall also include the information required by subsection (3) of this section.*
- (3) (a)
  1. *Third-party purchasers or their designees shall obtain from the office of the property valuation administrator of the county in which the real property is located the most recent address for the property owner.*
  2. *To obtain information from the office of the property valuation administrator, the third-party purchaser shall submit a list of addresses, map identification numbers, or parcel numbers for which updated information is requested to the property valuation administrator, who shall:*
    - a. *Update his or her records with regard to the properties for which information is requested; and*
    - b. *Provide the updated information to the third-party purchaser within ten (10) days.*
  3. *For this service, the property valuation administrator may charge a fee not to exceed two dollars (\$2) for each address provided.*
  4. *Except as provided in subparagraph 5. of this paragraph, the third-party purchaser shall send the notices required by subsections (1) and (2) of this section to the address provided by the property valuation administrator.*
  5. *If, due to insufficient staffing, the property valuation administrator is unable to provide the requested information to the third-party purchaser within ten (10) days of submission, the property valuation administrator shall immediately notify the third-party purchaser, and the third-party purchaser may send the notices required by subsections (1) and (2) of this section to the address reflected in the public records of the property valuation administrator.*
  6. *Any notices sent pursuant to subsections (1) and (2) of this section that are returned as undeliverable shall be re-sent by first class mail with proof of mailing addressed to "Occupant" at the address of the property that is the subject of the certificate of delinquency. These notices shall be sent within ten (10) days of receipt of the returned notice.*
  7. *The third-party purchaser shall maintain complete and accurate records of all notices sent pursuant to this section.*

(b) *The notices required by this section shall include the following information*~~[give the same notice as required of a county attorney in KRS 134.500(3)].~~

~~(a) The notice shall advise the owner that:~~

1. *A statement that the certificate of delinquency is a lien of record against ~~the~~~~[all]~~ property for which delinquent taxes are owed~~[of the owner];~~*
2. *A statement that the certificate bears interest at the rate provided in Section 7 of this Act;*~~[KRS 134.500; and]~~
3. *A statement that if the certificate is not paid, it will be subject to collection as provided by law. The notice required by subsection (2) of this section shall also include a statement of the intent to institute legal action to collect the amount due;*
4. *A complete listing of the amount due, as of the date of the notice, broken down as follows:*
  - a. *The purchase price of the certificate of delinquency;*

*b. Interest accrued subsequent to the purchase of the certificate of delinquency; and*

*c. Fees imposed by the third-party purchaser; and*

5. *Information, in a format and with content as determined by the department, detailing the provisions of the law relating to third-party purchaser fees and charges.*

~~(c)(b)~~ In addition, the notice shall provide the following information to the taxpayer:

1. The legal name of the *third-party* purchaser;
2. The *third-party* purchaser's physical address;
3. The *third-party* purchaser's mailing address for payments, if different from the physical address; and
4. The *third-party* purchaser's telephone number.

If the information required by this paragraph changes, the *third-party* purchaser shall, *within thirty (30) days of the change becoming effective*, send a notice to *each*~~the~~ taxpayer by *first-class mail with proof of mailing*~~registered mail~~ with the corrected information. *The third-party purchaser shall also update contact information included in the records of the county clerk within ten (10) days of the change becoming effective.* Failure to send the original notice or any correction notices shall result in the suspension of the accrual of all interest and any fees incurred by the *third-party* purchaser after that date until proper notice is given as required by this subsection.

(4) *If a person entitled to pay a certificate of delinquency to a third-party purchaser makes payment on the certificate of delinquency to the county clerk under the conditions described in subsection (3)(d) of Section 9 of this Act, the payment shall constitute payment in full, and no other amounts may be collected by the third-party purchaser from the person.*

(5) *A third-party purchaser may offer an installment payment plan to a taxpayer under the terms and conditions established by the department in an administrative regulation.*

~~(2) If a private person is the owner of a certificate of delinquency, the private purchaser may, after the expiration of the one (1) year period provided in KRS 134.470:~~

~~(a) Institute an action against the delinquent taxpayer to collect the amount of the certificate, and any other certificates subsequently issued to the same owner against the same delinquent, and shall have all the remedies available for the enforcement of a debt; or~~

~~(b) Institute an action to enforce the lien provided in subsection (1) of KRS 134.420, represented by the certificate that is more than one (1) year of age, and those certificates subsequently held by the same owner against the same delinquent or property; or~~

~~(c) Institute one (1) action including both types of actions mentioned in paragraphs (a) and (b) of this subsection, and the joinder of actions shall not be defeated if the delinquent taxpayer has disposed of any property covered by the lien, but the purchaser of the property shall be made a defendant if the judgment is to affect his interest in the property, and as between them the delinquent taxpayer shall be responsible.~~

~~(3) If the state, county, or a taxing district is the owner of a certificate of delinquency, it shall have, after the expiration of the one (1) year period provided in KRS 134.470, in addition to the remedies mentioned in subsection (2) of this section, the right to distraint and sell any property owned by the delinquent, including that on which the lien provided in subsection (1) of KRS 134.420 has attached. Any property sold under distraint proceedings shall be sold in the same manner as provided in KRS 134.430 and 134.440, except that the exercise of the power shall be vested in the county attorney.~~

~~(4) If property is sold pursuant to a judgment of foreclosure, it shall be appraised pursuant to the provisions of KRS 426.520 and there shall be a right of redemption as provided in KRS 426.530. If there is no purchaser at a foreclosure sale, the master commissioner shall make a deed to the person or persons shown by record to be the owner of the certificate or certificates of delinquency, and they shall have a pro rata interest in accordance with the amount of their respective certificates.]~~

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 134 IS CREATED TO READ AS FOLLOWS:

- (1) *Any action to collect any amount due on a certificate of delinquency or personal property certificate of delinquency may be brought at any time after the passage of one (1) year from the date the taxes became delinquent, and shall be brought within eleven (11) years of the date when the taxes became delinquent.*
- (2) *A third-party purchaser may:*
  - (a) *Institute an action against the delinquent taxpayer to collect the amount of the certificate of delinquency and any other certificates of delinquency subsequently issued to the same third-party purchaser against the same delinquent, and shall have all the remedies available for the enforcement of a debt;*
  - (b) *Institute an action to enforce the lien provided in Section 18 of this Act, represented by the certificate of delinquency and those certificates subsequently held by the same third-party purchaser against the same delinquent or property; or*
  - (c) *Institute one (1) action including both types of actions mentioned in paragraphs (a) and (b) of this subsection, and the joinder of actions shall not be defeated if the delinquent taxpayer has disposed of any property covered by the lien, but the purchaser of the property shall be made a defendant if the judgment is to affect his or her interest in the property, and as between them the delinquent taxpayer shall be responsible.*
- (3) *If the state, county, or a taxing district is the owner of a certificate of delinquency or personal property certificate of delinquency, it shall have, in addition to the remedies provided in subsection (1) of this section, the right to distrain and sell any property owned by the delinquent taxpayer, including that on which the lien provided in Section 18 of this Act has attached. Any property sold under distraint proceedings shall be sold in the same manner as provided in Section 32 of this Act, except that the exercise of the power shall be vested in the county attorney.*
- (4) *Any property while owned by a delinquent taxpayer shall be subject to foreclosure or execution in satisfaction of a judgment pursuant to an action in rem or an action in personam, or both, to enforce the obligation.*
- (5) *If property is sold pursuant to a judgment of foreclosure, it shall be appraised pursuant to the provisions of KRS 426.520, and there shall be a right of redemption as provided in KRS 426.530. If there is no purchaser at a foreclosure sale, the master commissioner shall make a deed to the person or persons shown by record to be the owner of the certificate or certificates of delinquency, and that person or persons shall have a pro rata interest in accordance with the amount of their respective certificates.*

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 134 IS CREATED TO READ AS FOLLOWS:

- (1) *When real property is owned by two (2) or more persons and had been assessed as one (1) tract, and one (1) owner does not pay his or her share of the taxes due, the taxes owed by the owner failing to pay may be paid by any other owner. Any owner who pays the amount due by another owner under this section shall have a lien on the delinquent taxpayer's portion of the real property for the amount paid and may file suit to recover the amount paid.*
- (2)
  - (a) *Whenever one (1) tax claim or certificate of delinquency exists on land which is divided both as to ownership and area into two (2) or more tracts, any person or persons owning any of the tracts may, upon ten (10) days' notice given to the owners of the other tracts, make application to the county attorney and to the property valuation administrator of the county for an apportionment of the assessment.*
  - (b) *The property valuation administrator of the county may make an apportionment of the amount of the encumbrance among the owners of each tract according to the value of their respective interests as shown by the proof introduced by them.*
  - (c) *Any owner of a tract for which the tax claim or certificate of delinquency was apportioned may have the encumbrance on his or her property released by paying to the sheriff his or her pro rata share of the tax claim or to the county clerk his or her pro rata share of the certificate of delinquency as ascertained by the decision of apportionment.*
  - (d) *The determination of the property valuation administrator of the county shall be final unless an appeal therefrom to the Circuit Court is prosecuted within sixty (60) days from the issuance of the decision.*

➔Section 18. KRS 134.420 is amended to read as follows:

- (1) ~~{(a)}~~ The state and each county, city, or other taxing district shall have a lien on the property assessed for taxes due them respectively for *eleven (11)*~~{ten (10)}~~ years following the date when the taxes become delinquent~~{, and also on any real property owned by a delinquent taxpayer at the date when the sheriff offers the tax claims for sale as provided in KRS 134.430 and 134.440}~~.
- (2)~~{(b)}~~ This lien shall not be defeated by gift, devise, sale, alienation, or any means except by sale to a bona fide purchaser, but no purchase of property made before final settlement for taxes for a particular assessment date has been made by the sheriff shall preclude the lien covering the taxes.
- (3)~~{(c)}~~ The lien shall include all interest, penalties, fees, commissions, charges, costs, attorney fees, and other expenses as provided by this chapter that have been incurred by reason of delinquency in payment of the tax ~~claim~~~~{bill or}~~ certificate of delinquency, *personal property certificate of delinquency*, or in the process of collecting *any of them*~~{either}~~, and shall have priority over any other obligation or liability for which the property is liable.
- (4)~~{(d)}~~ The lien of any city, county, or other taxing district shall be of equal rank with that of the state.
- (5)~~{(e)}~~ When any proceeding is instituted to enforce the lien provided in this subsection, it shall continue in force until the matter is judicially terminated.
- (6)~~{(f)}~~ Every city of the third, fourth, fifth, and sixth class shall file notice of the delinquent tax liens with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The notice shall be recorded in the same manner as notices of lis pendens are filed, and the file shall be designated miscellaneous state and city delinquent and unpaid tax liens.

~~{(2)} If any person liable to pay any tax administered by the Department of Revenue, other than a tax subject to the provisions of subsection (1) of this section, neglects or refuses to pay the tax after demand, the tax due together with all penalties, interest, and other costs applicable provided by law shall be a lien in favor of the Commonwealth of Kentucky. The lien shall attach to all property and rights to property owned or subsequently acquired by the person neglecting or refusing to pay the tax.~~

~~{(3)} The lien imposed by subsection (2) of this section shall remain in force for ten (10) years from the date the notice of tax lien has been filed by the commissioner of the Department of Revenue, or his delegate with the county clerk of any county or counties in which the taxpayer's business or residence is located, or any county in which the taxpayer has an interest in property.~~

~~{(4)} The tax lien imposed by subsection (2) of this section shall not be valid as against any purchaser, judgment lien creditor, or holder of a security interest or mechanic's lien until notice of the tax lien has been filed by the commissioner of the Department of Revenue or his delegate with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The recording of the tax lien shall constitute notice of both the original assessment and all subsequent assessments of liability against the same taxpayer. Upon request, the Department of Revenue shall disclose the specific amount of liability at a given date to any interested party legally entitled to the information.~~

~~{(5)} Even though notice of a tax lien has been filed as provided by subsection (4) of this section, and notwithstanding the provisions of KRS 382.520, the tax lien imposed by subsection (2) of this section shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made within forty five (45) days after the date of tax lien filing or the date the person making the disbursements had actual notice or knowledge of tax lien filing, whichever is earlier, provided the security interest:~~

~~{(a)} Is in property which:~~

~~1. At the time of tax lien filing is subject to the tax lien imposed by subsection (2) of this section; and~~

~~2. Is covered by the terms of a written agreement entered into before tax lien filing; and~~

~~{(b)} Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.~~

➔Section 19. KRS 134.140 is amended to read as follows:

- (1) ~~The sheriff, by virtue of his office, shall be collector of all state, county, consolidated local government, and district taxes, unless the payment thereof is, by law, especially directed to be made to some other officer. Where provision is not otherwise made for the collection of taxes, the assessment or proportion thereof allocable to a local taxing district shall be certified to the clerk of the court of the county or the clerk of the consolidated local government which constitutes or in which such taxing district is located, for collection as provided by law.~~
- (2) ~~The sheriff shall not receive or receipt for any taxes until the tax bills have been delivered to him by the county clerk, as provided in KRS 133.220 and 133.230.~~
- (3) ~~(a) The sheriff *may*, except in urban county governments, *may*, and at the direction of the fiscal court or a consolidated local government *shall*, invest any tax revenues held in his *or her* possession from the time of collection until the time of distribution to the proper taxing authorities [pursuant to KRS 134.300, 134.320, and 160.510]. Investments by the sheriff shall be restricted to those permitted by KRS 66.480.~~
- (2) ~~(b) As part of the [At the time of his] monthly distribution of taxes to a [the] district board of education as required by Section 21 of this Act, the sheriff shall pay to the board of education that part of *the* [his] investment earnings for the month which *are* [is] attributable to the investment of school taxes, *less an amount not to exceed four percent (4%) of the earned monthly investment income to reimburse the sheriff for the costs of administering the investment* [but this subsection shall not be construed to prohibit the sheriff from obtaining his expenses not to exceed the rate of four percent (4%) of the earned monthly investment income for the administration of this investment fund].~~
- (3) ~~(c) In [those] counties where the sheriff pays [his] fees and commissions *collected* to the county and the salaries and expenses of *the sheriff's* [his] office are paid by the county, the sheriff shall pay to the county treasurer the investment earnings, other than those paid to the board of education in compliance with *subsection (2) of this section* [paragraph (b) of this subsection], at the time of his *or her* monthly distribution of taxes to the county *required by Section 21 of this Act*.~~
- (4) ~~(d) In those counties where the office of sheriff is funded in whole or in part by fees and commissions, the sheriff may use investment earnings, other than those which must be paid to the board of education in compliance with *subsection (2) of this section* [paragraph (b) of this subsection], to pay lawful expenses of his *or her* office [and the remainder shall be paid to the fiscal court or a consolidated local government at the time of the sheriff's annual settlement for county, consolidated local government, and district taxes and excess fees].~~

➔Section 20. KRS 134.160 is amended to read as follows:

- (1) The *governing body of a county* [sheriff shall keep his office at the county seat, except in counties where he has an office already established in a city other than the county seat, in which case he shall continue his office at the place now established. The fiscal court] shall provide *the sheriff* [him] with [a room or rooms for an] office *space that includes a secure place* [with a vault or place of safety in which] to keep the records of his *or her* office. [He shall keep his office open for the collection of taxes at all reasonable times, except on Sundays and legal holidays.]
- (2) (a) The sheriff shall keep an accurate account of all moneys received *and all disbursements made* [by him], showing:
1. The amount; [;]
  2. The *date and time of payment or disbursement*;
  3. *The name of the person making the payment or to whom the disbursement was made; and*
  4. *The account the payment was credited to or the disbursement deducted from* [when and the person from whom received, and on what account. He shall also keep an accurate record of all disbursements made by him, showing the amount, to whom paid, the time of payment, and on what account].
- (b) *The sheriff shall maintain records that account for* [He shall so arrange and keep his books that the amounts received and paid on account of] separate and distinct appropriations [shall be exhibited] in separate and distinct accounts.

- (c) *The sheriff~~He~~ shall balance all accounts~~his books~~ on a monthly basis unless otherwise provided by law~~the first day of each month, so as to show the correct amount on hand belonging to each fund on the day the balance is made~~. The cost of maintaining records and accounts in whatever form ~~books~~ shall be paid for as other county records.*
- (3) *All payments received by the sheriff shall be entered immediately by the sheriff on his or her books. The sheriff may provide a receipt specifying the amount and to what account the payment was credited to the person making the payment.*
- (4) *The sheriff shall obtain a receipt for all disbursements made by the sheriff.*
- (5) *Other than as permitted for investment and expenditures by this chapter, the sheriff shall not apply or use any money received by him or her for any purpose other than that for which the money was paid or collected.*
- (6) *The sheriff shall keep all~~his~~ books and accounts in the manner and form required by the department~~of Revenue~~.*
- (7)~~(4)~~ *The books of the sheriff shall be open at all times to the inspection of the Auditor of Public Accounts, the department~~of Revenue~~, the governing body of the county~~fiscal court~~ or any member thereof, the governing body of any other taxing district for which the sheriff collects taxes or any member thereof, the Commonwealth's and county attorneys, and any taxpayer or person having any interest therein.*

➔SECTION 21. A NEW SECTION OF KRS CHAPTER 134 IS CREATED TO READ AS FOLLOWS:

- (1) *The sheriff shall provide monthly reports by the tenth day of each month to the chief executive of the county, the department, and any other district for which the sheriff collects taxes. The governing body of the county may require the sheriff to report and pay on a more frequent basis if necessary for bonding requirements; however, the sheriff shall not be required to report and pay more frequently than weekly.*
- (2) *The report shall be broken down by governmental entity and shall include the following information for the preceding month or reporting period, if the reporting period is other than monthly:*
- (a) *The total amount of taxes collected;*
- (b) *The total amount of any fines, forfeitures, or other moneys collected; and*
- (c) *The disposition of such revenue or money collected.*
- (3) *At the time of making the report, the sheriff shall pay to the county treasurer or other officer designated by the governing body of a county, to the department, and to any other district for which the sheriff collects taxes, all funds belonging to the county, the state, or the district that were collected during the period covered by the report.*
- (4) *Any sheriff failing to pay over taxes collected as required by law shall be subject to a penalty of one percent (1%) for each thirty (30) day period or fraction thereof that the payment is not made, plus interest at the tax interest rate provided in KRS 131.183 on such amounts. The governing body of a county, the department, or the other district for which the sheriff collects taxes, in its settlement with the sheriff, shall charge him or her with such penalties and interest.*
- (5) *The chief executive of a county, or the commissioner of the department may grant an extension of time, not to exceed fifteen (15) days, for filing the report required by subsection (1) of this section with that entity when good cause exists. The extension shall be in writing and shall be recorded in the office of the county clerk. The extension when granted shall suspend the penalty and interest for the duration of the extension. The penalty and interest shall apply at the expiration of the extension.*

➔SECTION 22. A NEW SECTION OF KRS CHAPTER 134 IS CREATED TO READ AS FOLLOWS:

- (1) *Each sheriff shall annually settle his or her accounts with the department, the county, and any district for which the sheriff collects taxes on or before September 1 of each year. If any sheriff resigns, dies, or otherwise vacates his or her office, the books and records shall be made available to the department, the county, and any other district for which the sheriff collects taxes within thirty (30) days from the date that the office is vacated. The annual settlement of the sheriff shall be audited in accordance with KRS 43.070 and 64.810.*
- (2) (a) *The department shall conduct the settlement relating to taxes collected for the state.*

- (b) *The sheriff shall settle his or her accounts with the county, the school district, and any other taxing district for which he or she collects taxes. On request of the governing body of the county or any other district for which the sheriff collects taxes, the department may conduct the local settlement. If no local settlement has been initiated by July 1 of any year, the department may initiate the local settlement on behalf of the county, the school district, and the taxing districts. Upon completion of the local settlement, the department may receive reasonable reimbursement for expenses incurred.*
- (3) *In making his or her settlement with the local governments and the department, the sheriff shall be allowed credit for the uncollected tax claims properly filed with the county clerk's office as required by Section 6 of this Act.*
- (4) *All tax bills on omitted property that were not turned over to the sheriff in time to be collected shall be carried over as a charge against the sheriff as part of the annual settlement.*
- (5) *The report of the state and local settlement shall be filed in the county clerk's office and approved by the governing body of the county no later than September 1 of each year. The settlement shall show the amount of ad valorem tax collected for the county, the school district, and all taxing districts, and an itemized statement of the money disbursed to or on behalf of the county, the school district, and all taxing districts.*
- (6) *The settlement shall be published pursuant to KRS Chapter 424.*
- (7) *On the final settlement, the sheriff shall pay to the county treasurer all money that remains in his or her hands attributable to amounts charged against the sheriff relating to the collection of property taxes, and shall take receipts as provided in Section 20 of this Act. The sheriff shall pay any additional amounts charged against him or her as a result of the settlements.*
- (8) (a) *If the sheriff fails to remit amounts charged against him or her to the appropriate taxing district, the department may issue bills for the subsequent year and may assume all collection duties in the name of and on behalf of the cities, counties, school districts, and other taxing districts.*
- (b) *The fees and commissions which the sheriff would have been entitled to receive from the taxing districts shall be paid to the department.*
- (9) *No tax bills or tax books shall be delivered to the sheriff during the second or any subsequent calendar year of the sheriff's regular term until the settlement is submitted and approved by the department and the governing body of a county, and until the sheriff's bond is in place, should a bond be required by the fiscal court.*
- (10) *If the tax records of a county are destroyed by fire, flood, tornado, or other act of nature, or are lost, stolen, or mutilated so as to require a reassessment of the property in the county or a recertification of the tax bills, the sheriff shall have five (5) months from the time he or she receives the recertified tax bills to make settlement pursuant to this section.*
- (11) *In counties containing a population of less than seventy thousand (70,000), the sheriff shall file annually with his or her settlement:*
- (a) *A complete statement of all funds received by his or her office for official services, showing separately the total income received by his or her office for services rendered, exclusive of his or her commissions for collecting taxes, and the total funds received as commissions for collecting state, county, and school taxes; and*
- (b) *A complete statement of all expenditures of his or her office, including his or her salary, compensation of deputies and assistants, and reasonable expenses.*
- (12) *At the time he or she files the statements required by subsection (11) of this section, the sheriff shall pay to the governing body of the county any fees, commissions, and other income of his or her office, including income from investments, which exceed the sum of his or her maximum salary as permitted by the Constitution and other reasonable expenses, including compensation of deputies and assistants. The settlement for excess fees and commissions and other income shall be subject to correction by audit conducted pursuant to KRS 43.070 or 64.810. The provisions of this subsection shall not be construed to amend KRS 64.820 or 64.830.*
- (13) *If a county's population that equaled or exceeded seventy thousand (70,000) is less than seventy thousand (70,000) after the most recent federal decennial census, then the provisions of KRS 64.368 shall apply.*

➔Section 23. KRS 134.215 is amended to read as follows:

- (1) An outgoing sheriff, as soon as his *or her* successor has been qualified and inducted into office and his *or her* official bond approved, shall:
  - (a) Immediately vacate his *or her* office;~~;~~
  - (b) Deliver to his *or her* successor all books, papers, records, and other property held by virtue of his *or her* office;~~;~~ and
  - (c) Make a complete settlement of his *or her* accounts as sheriff, *as provided in Section 22 of this Act*, except as otherwise provided in this section.
- (2) (a) All unpaid tax ~~claims[bills]~~ and ~~tax claims[bills]~~ upon which partial payments have been accepted in the possession of the sheriff upon the date of expiration of his *or her* term shall be turned over to the incoming sheriff, who shall collect and account for them as provided by law.
  - (b) The outgoing sheriff shall take a receipt from the incoming sheriff for the unpaid and partially paid tax ~~claims[bills]~~. This receipt shall show in detail for each unpaid and for each partially paid tax ~~claim[bill]~~ the total amount due each taxing district as *reflected on*~~[shown upon]~~ the tax ~~claims[bills]~~. ~~Provided, however, in counties containing a population of seventy thousand (70,000) or over, the receipt shall show the total amount due each taxing district as shown upon the unpaid and partially paid tax bills.~~ The receipt shall be signed and acknowledged by the incoming sheriff before the county clerk, filed with the county ~~clerk[judge/executive]~~, and recorded in the order book of the county ~~clerk[judge/executive]~~ in the manner required by law for recording the official bond of the sheriff. A certified copy of the receipt as recorded in the order book of the county ~~clerk[judge/executive]~~ shall be filed with the department~~[of Revenue]~~.
  - (c) The outgoing sheriff and his *or her* bondsmen or sureties shall be relieved in~~[securing his quietus and in]~~ the final settlement of his *or her* accounts of all responsibility for collecting and accounting for the amounts covered by the receipt, and the incoming sheriff shall be charged with full responsibility for collecting and accounting for these amounts as otherwise provided by law for the collection and accounting for taxes.~~[If a county's population that equaled or exceeded seventy thousand (70,000) is less than seventy thousand (70,000) after the most recent federal decennial census, then the provisions of KRS 64.368 shall apply.]~~
- (3) Each outgoing sheriff shall make a final settlement with the department,~~[of Revenue and]~~ the fiscal court, and *all districts for which his or her office collected taxes*~~[taxing district of his county]~~ by March 15 immediately following the expiration of his *or her* term of office. *The settlement shall address*~~[for]~~ all charges of taxes made against *the sheriff*~~[him]~~ and~~[for]~~ all money received by him *or her* as sheriff, *and shall include all of the information required for the annual settlement pursuant to Section 22 of this Act. Upon approval of the final settlement, the outgoing sheriff*~~[and to obtain his quietus, and immediately thereafter he]~~ shall deliver these records to the incumbent sheriff. *The final settlement of the outgoing sheriff shall be audited as provided in KRS 43.070 and 64.810.*
- (4) (a) For *the purpose*~~[purposes]~~ of *establishing an accurate* accounting for unpaid and partially paid tax ~~claims[bills]~~, either the outgoing sheriff, the incoming sheriff, or both, may, by giving advance notice by publication pursuant to KRS Chapter 424, refuse to accept payment of ad valorem taxes during any or all of *the period*~~[that portion of their terms of office]~~ from January 1 through January 15.~~[Irrespective of whether the office refuses to accept payment of taxes during any or all of this fifteen (15) day period.]~~
  - (b) *During the transition period from January 1 through January 15*, both the incoming and outgoing sheriffs shall have working access to the office facilities and to the records and mail of the sheriff's office relating to the payment, collection, and refund of ad valorem taxes on property.
  - (c) Interest shall not be assessed or collected for the period during which payment of taxes is prohibited under the terms of this section.
- (5) The outgoing sheriff shall be~~[allowed and]~~ paid in accordance with KRS 64.140 and 64.530 the reasonable expenses actually incurred in preparing the receipt required under this section. Reasonable expenses actually incurred may include office expenses and salaries of himself *or herself*, deputies, and employees paid in accordance with the schedule of the previous year or the amount paid an auditor necessary in determining, verifying, and recording the unpaid and partially paid tax ~~claims[bills]~~ turned over to the incoming sheriff.

➔Section 24. KRS 134.230 is amended to read as follows:

- (1) (a) *The sheriff shall execute a bond annually to the Commonwealth with one (1) or more sufficient sureties in the minimum sum of ten thousand dollars (\$10,000), conditioned on the faithful performance of his or her duties and to pay over to the proper person and at the proper time all money collected. The bond shall be executed prior to the sheriff collecting taxes for the year in which the bond is executed. The bond shall be approved by order of the governing body of the county, and shall be filed by the governing body of the county with the county clerk and with the department.*
- (b) *The governing body of the county~~[fiscal court]~~ may require the sheriff to enter into an additional bond, with good surety to be approved by the governing body of the~~[fiscal court, when the fiscal court deems it necessary in the interest of the state or]~~ county.*
- (2) (a) *Subject to the provisions of paragraph (b) of this subsection, the sureties on all bonds executed by the sheriff pursuant to this section shall be jointly and severally liable for any default of the sheriff during the calendar year in which the bond was executed, whether the liability accrues before or after the execution of the bond.*
- (b) *Neither the sheriff nor a surety shall be liable for any act or default of the sheriff relating to the sheriff's revenue duties unless notice of the act or default of the sheriff giving rise to a claim upon the bond has been given to the surety by the department, the chief executive of the county, the county attorney, or other person asserting the claim within ninety (90) days after discovery or at the latest within one (1) year after the end of the year within which the bond was executed.*
- (3) (a) *Any sheriff who fails to execute a bond as required by this section shall forfeit his or her office. The vacancy shall be filled as provided in KRS 63.220.*
- (b) *If the chief executive of the county does not appoint a sheriff as provided in KRS 63.220 within thirty (30) days, the department may appoint a tax collector to collect the moneys due the state. An appointed collector shall execute a bond within ten (10) days of being appointed, in the same manner and under the same conditions as provided in this section for a sheriff. A sheriff who forfeits his or her office under this subsection or who resigns his or her office shall not be appointed as collector under this section.*

➔Section 25. KRS 134.380 is amended to read as follows:

- (1) The ~~department~~~~[commissioner]~~ may act in the name of and in behalf of the state and in the name of and in behalf of any and all counties~~[, consolidated local government]~~, school *districts*, and other taxing districts in the state to institute and prosecute any action or proceeding for the collection of delinquent taxes and the assessment of omitted property. If the department assumes the duties of collecting the delinquent taxes assessed under the authority of KRS Chapter 132, it shall have all the powers, rights, duties, and authority conferred generally upon the department by the Kentucky Revised Statutes, including but not limited to Chapters 131, *132*, *133*, 134, and 135.
- ~~(2) [Field agents, accountants, and attorneys of the department shall prosecute all actions and proceedings under the direction of the commissioner. Field agents, accountants, attorneys, and all other employees of the department engaged in the prosecution of the actions shall not be hired by personal service contract. The commissioner shall prosecute diligently, or cause to be prosecuted by field agents, accountants, and attorneys employed by him, the collection of all delinquent taxes due the state.]~~
- ~~(3) [Nothing contained in this chapter shall prevent the department~~~~[commissioner of revenue]~~ from assessing any property in accordance with the provisions of KRS 136.020, 136.030, 136.050, or 136.120 to 136.180.]
- ~~(3) [(4)] The department may require the use of any reports, forms, or databases necessary to administer the law in connection with the collection of delinquent taxes. [The department shall require an index to be kept of all certificates of delinquency.]~~

➔Section 26. KRS 134.400 is amended to read as follows:

- (1) *The twenty percent (20%) penalty established by Section 37 of this Act, the administrative fee established by Section 28 of this Act, the fees payable to the department for collecting delinquent taxes pursuant Section 12 of this Act, and any other fees or penalties payable to the department for collecting delinquent taxes* ~~[All penalties imposed by law, either in whole or in part, in favor of or for the benefit of agents of the Department~~

of Revenue, sheriffs, and other state, county, or district agents or officers, upon or for the recovery of taxes or the assessment of omitted property,] shall be paid into the State Treasury and credited as provided [for the twenty percent (20%) penalty] in subsection (2) of this section.

- (2) [~~The twenty percent (20%) penalty collected on taxes due the state, county, school, or other taxing district shall be paid into the State Treasury.~~] One-fourth (1/4) of the moneys [thus] received *pursuant to the provisions of subsection (1) of this section* shall be credited to the general [expenditure] fund. The remaining three-fourths (3/4) shall [also] be credited to [the general expenditure fund unless the General Assembly, in its biennial branch budget bill, provides that it be credited to] a fund to be designated and known as the delinquent tax fund, *to [in which case it shall be so credited and so much thereof as may be necessary shall] be used for the administration and enforcement of the laws relating to the collection of delinquent taxes and the assessment of omitted property.* [All] Salaries, fees, and expenses authorized by the laws relating to the collection of delinquent taxes and the assessment of omitted property, *may [except the fees of county attorneys, shall] be paid [payable] out of the delinquent tax fund upon certifications or requisitions of the commissioner of revenue.*

➔ Section 27. KRS 134.495 is amended to read as follows:

Whenever the Commonwealth [~~of Kentucky~~] prosecutes an action in a Circuit Court pursuant to *Section 16 of this Act* [KRS 134.490], to enforce a certificate of delinquency *or a personal property certificate of delinquency, the [or an action to invalidate a land tax sale and enforce a lien for taxes pursuant to KRS 134.540, such]* court shall have authority to assess property which has been omitted for any reason, whenever necessary to establish the total personal liability of any defendant in such action or to establish the total amount of any lien or liens against the property. Provided, however, that [~~neither~~] the twenty percent (20%) penalty provided in KRS 132.340 and 135.060 [~~, nor the fifteen percent (15%) administrative fee provided in KRS 134.540 and 134.550,~~] shall *not* apply to the amount of taxes, penalties, and interest due for any assessment made pursuant to this section for any omission which was caused through no fault of the person owning the property on the assessment date.

➔ Section 28. KRS 134.510 is amended to read as follows:

- (1) After the state, county, and taxing districts obtain real property as authorized by *Section 16 of this Act* [KRS 134.490], the designated agent of the commissioner [~~of revenue~~] may advertise and sell at public sale any of the lands, and the commissioner may convey the lands by deed to the purchaser. The commissioner shall, within thirty (30) days from receipt of payment, pay to the county and taxing district the amount of the proceeds due each. The department [~~of Revenue~~] shall be entitled to an administration fee equal to fifteen percent (15%) of the sale price of the property, which shall be paid into the delinquent tax fund provided for in *Section 26 of this Act* [KRS 134.400].
- (2) The sales shall be advertised by a written or printed notice posted at the courthouse door for fifteen (15) days before the date of sale, and by publication pursuant to KRS Chapter 424, and may in addition be advertised by printed handbills posted for fifteen (15) days before the date of sale in three (3) or more conspicuous places in the taxing districts.
- (3) Any real property acquired by the state, county, and taxing districts pursuant to *Section 16 of this Act* [KRS 134.490] may be redeemed at any time before the commissioner gives a deed to a purchaser, by paying to the county clerk the amount due at the time the property was acquired, plus subsequent costs and interest at the rate of twelve percent (12%) per annum.

➔ Section 29. KRS 134.520 is amended to read as follows:

- (1) If a certificate of delinquency *or personal property certificate of delinquency* held by an individual is declared void by a court of competent jurisdiction because of the irregularity of taxing officers, the amount for which the certificate was issued shall be refunded by the state, county and taxing districts on a pro rata basis. If a school district or county is unable to make the refund currently when requested, it shall be given preference from the next year's revenue. The application for refund must be made within one (1) year after the judgment. [~~The rate of interest refunded shall be at the tax interest rate as defined in KRS 131.010(6), rather than twelve percent (12%) per annum.~~] The property covered by the void certificate shall be assessed immediately as omitted property and the tax bill shall be payable as soon as prepared.
- (2) (a) *If a certificate of delinquency held by a third-party purchaser who paid the certificate of delinquency to the county clerk is unenforceable because it is a duplicate certificate of delinquency, because the tax liability represented by the certificate of delinquency was satisfied prior to the purchase of the certificate of delinquency, or because all or a portion of the certificate of delinquency is exonerated, the third-party purchaser may apply to the county clerk for a refund.*

- (b) *The application for refund shall include written proof that one (1) of the situations described in paragraph (a) of this subsection exists with regard to the certificate of delinquency for which a refund is sought.*
- (c) 1. *Upon acceptance and approval of the application for refund, the county clerk shall approve a refund of the amount paid to the county clerk by the third-party purchaser in satisfaction of the certificate of delinquency.*
2. *Amounts refunded to the third-party purchaser shall be deducted from amounts in the hands of the county clerk due to the state, county, taxing districts, sheriff, county attorney, and the county clerk on a pro rata basis, if the county clerk has sufficient funds in his or her hands to make the refund.*
3. *If the county clerk does not have sufficient funds to make the refund at the time the refund is approved, the county clerk may either:*
- a. *Retain the approved refund claim in his or her office and make the refund payment as soon as he or she has sufficient funds in his or her hands to make the refund payment; or*
- b. *Provide a signed letter to the person to whom payment is due, which includes the amount due from each taxing jurisdiction or fee office, and which directs each taxing jurisdiction or fee official to pay to the person the amount due and owing from that taxing jurisdiction or fee official as reflected in the letter.*
4. *The county clerk shall document his or her records to reflect the action taken in response to an approved refund.*
- (d) *Any third-party purchaser who receives a refund pursuant to this section shall release any liens on the property for which the refund was received within thirty (30) days of receiving the refund. Failure to release the lien shall subject the third-party purchaser to all of the remedies provided in KRS 382.365.*

➔Section 30. KRS 134.990 is amended to read as follows:

- (1) *Any sheriff who fails to make his or her annual settlement available as required by Section 22 of this Act, or who fails to remit any amounts which are due to the taxing districts as required by law, shall be subject to indictment in his or her county of residence, and upon conviction shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) [Any sheriff who violates subsection (2) of KRS 134.140 shall be fined one hundred dollars (\$100) for each offense].*
- (2) ~~Any person who violates the provisions of KRS 134.150 shall, upon indictment and conviction in the county in which the act was done, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), and be removed from office.~~
- (3) ~~Any sheriff who violates subsection (5) of Section 20 of this Act [(3) of KRS 134.170] shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense.~~
- (3) ~~(4) Any sheriff who fails to maintain accurate records of ad valorem taxes collected, or who fails to collect taxes due that were collectable shall be held liable on his or her bond for the amount of the tax, penalties, interest, and costs due, plus a thirty percent (30%) penalty thereon. Action shall be brought in the Circuit Court of the county in which the tax is due, on motion of the county attorney or department on behalf of the state. All actions shall be prosecuted by the county attorney, who shall be entitled to retain the penalty recovered for services rendered if all amounts otherwise due are recovered and paid to the taxing jurisdictions entitled to receive those amounts [Any sheriff who violates subsection (2) of KRS 134.200 shall be fined not less than five hundred dollars (\$500) for each offense].~~
- (4) ~~(5) Any outgoing sheriff who fails for ten (10) days to comply with the provisions of Section 23 of this Act [KRS 134.215] shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), and be liable on his or her bond for any default.~~
- (5) ~~(6) In addition to the penalty imposed by Section 21 of this Act, any sheriff who fails to report as required in Section 21 of this Act [KRS 134.300 shall be liable to indictment in the county of his residence, and upon conviction] shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).~~

- ~~(6)(7)~~ **Any person who is required to register with the department pursuant to Section 11 of this Act who fails to register shall be fined not less than ten dollars (\$10) or more than five hundred dollars (\$500) for each certificate of delinquency purchased while the person was not registered but should have been**~~{Any sheriff who fails to report as provided in KRS 134.320 shall be liable to indictment in the Franklin Circuit Court, and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense}.~~
- ~~(7)(8)~~ Any person who willfully fails to comply with any **administrative**~~{rule or}~~ regulation promulgated under subsection (3) **of Section 25 of this Act**~~{(4) of KRS 134.380}~~ shall be fined not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000).
- ~~(8)(9)~~~~Any sheriff who violates subsection (5) of KRS 134.430 shall be fined one hundred dollars (\$100) and be liable on his official bond for the damages sustained by any person aggrieved.~~
- ~~(10)~~ Any county attorney who **contracts with the department to collect certificates of delinquency and personal property certificates of delinquency who** fails to **send the notices required by subsection (4) of Section 12 of this Act**~~{prepare, and any sheriff who fails to serve, the notice provided for in subsection (3) of KRS 134.500}~~ shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100) **for each notice that he or she fails to send.**
- ~~(9)(11)~~ Any sheriff who~~{intentionally}~~ fails to keep his **or her** books in an intelligible manner and according to the form prescribed by the department~~{of Revenue}~~, or to make the entries required by law, shall be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200) for each offense.
- (10) **Any third party-purchaser who attempts to circumvent the fairness of the sale process established pursuant to Section 10 of this Act by establishing multiple entities or involving multiple individuals in the bidding process shall be guilty of a Class A misdemeanor. The county attorney and the Attorney General shall have concurrent jurisdiction for the investigation and prosecution of offenses under this section.**
- (11) (a) **Any third party-purchaser who knowingly:**
1. **Demands costs or fees in excess of those permitted by Section 14 of this Act;**
  2. **Fails to send notices as required by Section 15 of this Act, or to include in the notices the information required by Section 15 of this Act; or**
  3. **Fails to provide revised contact information as required by Section 15 of this Act;**
- Shall be subject to a fine of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250) for the first offense, and for the second and any subsequent offenses, shall be fined not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500).**
- (b) **As used in this subsection, knowingly has the same meaning as in KRS 501.020.**
- (12) Any person who fails to do an act required, or does an act forbidden, by any provision of this chapter for which no other penalty is provided shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).

➔Section 31. KRS 131.130 is amended to read as follows:

Without limitation of other duties assigned to it by law, the following powers and duties are vested in the Department of Revenue:

- (1) The department may make administrative regulations, and direct proceedings and actions, for the administration and enforcement of all tax laws of this state.
- (2) The department, by representatives it appoints in writing, may take testimony or depositions, and may examine hard copy or electronic records, any person's documents, files, and equipment if those records, documents, or equipment will furnish knowledge concerning any taxpayer's tax liability, when it deems this reasonably necessary to the performance of its functions. The department may enforce this right by application to the Circuit Court in the county wherein the person is domiciled or has his or her principal office, or by application to the Franklin Circuit Court, which courts may compel compliance with the orders of the department.
- (3) The department shall prescribe the style, and determine and enforce the use or manner of keeping, of all assessment and tax forms and records employed by state and county officials, and may prescribe forms

necessary for the administration of any revenue law by the promulgation of an administrative regulation pursuant to KRS Chapter 13A incorporating the forms by reference.

- (4) The department shall advise on all questions respecting the construction of state revenue laws and the application thereof to various classes of taxpayers and property.
- (5) Attorneys employed by the Finance and Administration Cabinet and approved by the Attorney General as provided in KRS 15.020 may prosecute all violations of the criminal and penal laws relating to revenue and taxation. If a Finance and Administration Cabinet attorney undertakes any of the actions prescribed in this subsection, that attorney shall be authorized to exercise all powers and perform all duties in respect to the criminal actions or proceedings which the prosecuting attorney would otherwise perform or exercise, including the authority to sign, file, and present any complaints, affidavits, information, presentments, accusations, indictments, subpoenas, and processes of any kind, and to appear before all grand juries, courts, or tribunals.
- (6) In the event of the incapacity of attorneys employed by the Finance and Administration Cabinet or at the request of the secretary of the Finance and Administration Cabinet, the Attorney General or his or her designee shall prosecute all violations of the criminal and penal laws relating to revenue and taxation. If the Attorney General undertakes any of the actions prescribed in this subsection, he or she shall be authorized to exercise all powers and perform all duties in respect to the criminal actions or proceedings which the prosecuting attorney would otherwise perform or exercise, including but not limited to the authority to sign, file, and present any and all complaints, affidavits, information, presentments, accusations, indictments, subpoenas, and processes of any kind, and to appear before all grand juries, courts, or tribunals.
- (7) The department may require the Commonwealth's attorneys and county attorneys to prosecute actions and proceedings and perform other services incident to the enforcement of laws assigned to the department for administration.
- (8) The department may research the fields of taxation, finance, and local government administration, and publish its findings, as the commissioner may deem wise.
- (9) The department may make administrative regulations necessary to establish a system of taxpayer identifying numbers for the purpose of securing proper identification of taxpayers subject to any tax laws or other revenue measure of this state, and may require the taxpayer to place on any return, report, statement, or other document required to be filed, any number assigned pursuant to such administrative regulations.
- (10) The department may, when it is in the best interest of the Commonwealth and helpful to the efficient and effective enforcement, administration, or collection of sales and use tax, motor fuels tax, or the petroleum environmental assurance fee, enter into agreements with out-of-state retailers or other persons for the collection and remittance of sales and use tax, the motor fuels tax, or the petroleum environmental assurance fee.
- (11) The department may enter into annual memoranda of agreement with any state agency, officer, board, commission, corporation, institution, cabinet, department, or other state organization to assume the collection duties for any debts due the state entity and may renew that agreement for up to five (5) years. Under such an agreement, the department shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of those liquidated debts as provided under:
  - (a) KRS Chapters 131, 134, and 135 for the collection, refund, and administration of delinquent taxes; and
  - (b) Any applicable statutory provisions governing the state agency, officer, board, commission, corporation, institution, cabinet, department, or other state organization for the collection, refund, and administration of any liquidated debts due the state entity.
- (12) ***The department may refuse to accept a personal check in payment of taxes due or collected from any person who has ever tendered a check to the state which, when presented for payment, was not honored. Any check so refused shall be considered as never having been tendered.***

➔Section 32. KRS 131.500 is amended to read as follows:

- (1) (a) In addition to any other remedy provided by the laws of the Commonwealth, if any person has been assessed for a tax the collection of which is administered by the Department of Revenue as provided by the laws of the Commonwealth and if the person has not sought administrative or judicial review of the assessment as provided for in KRS 131.110, or if the person has sought but exhausted all administrative

and judicial review so that the assessment is final, due, and owing, the commissioner of revenue or his delegate may cause a demand to be made on the person for the payment thereof.

- (b) If the tax remains unpaid for thirty (30) days after the demand, the commissioner or his delegate may levy upon and sell all property and rights to property found within the Commonwealth belonging to the person or on which there is a lien provided by *Section 18 or 33 of this Act* [KRS 134.420], except the property that is exempt from an execution on a judgment in favor of the Commonwealth as provided in KRS Chapter 427, for the payment of the amount of the tax, penalty, interest, *fees*, and cost of the levy.
- (2) As soon as practicable after seizure of property, notice in writing shall be given by the commissioner or his delegate to the owner of the property. The notice shall be given to the owner either in person or by certified mail to his *or her* last known address. The notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.
- (3) The commissioner or his *or her designee* [delegate] shall as soon as practicable after the seizure of the property cause a notification of the sale of the seized property to be published in the newspaper with the largest circulation within the county *where the* [wherein such] seizure is made. The notice shall be published once each week for three (3) successive weeks. In addition, the notice shall be posted at the courthouse [and three (3) other public places] in the county where the seizure is made for fifteen (15) days next preceding sale. The notice shall specify the property to be sold, and the time, place, manner, and condition of the sale thereof.
- (4) If any property liable to levy is not divisible, so as to enable the commissioner or *the commissioner's designee* [his delegate] by sale of a part thereof to raise the whole amount of the tax, penalty, *fees*, interest, and cost of the levy, the whole of the property shall be sold.
- (5) The time of sale shall not be less than thirty (30) nor more than ninety (90) days from the time the seizure is made. The place of sale shall be within the county in which the property is seized, except by special order of the commissioner.
- (6) The sale shall [not] be conducted [in any manner other than] by public auction, or by public sale under sealed bids. In the case of the seizure of several items of property, the commissioner or his *or her* delegate may offer the items for sale separately, in groups, or in the aggregate and accept whichever method produces the highest aggregate amount.
- (7) (a) The commissioner or his *or her* delegate shall determine whether payment in full shall be required at the time of acceptance of a bid, or whether a part of the payment may be deferred for such period, not to exceed one (1) month, as he *or she* may determine to be appropriate.
- (b) If payment in full is required at the time of acceptance of a bid and is not then and there paid, the commissioner or his *or her* delegate shall forthwith proceed to again sell the property as provided in subsection (6) of this section.
- (c) If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid, within the prescribed period, suit may be instituted in the Franklin Circuit Court or the Circuit Court of the county where the sale was conducted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate of twelve percent (12%) per annum from the date of the sale; or, in the discretion of the commissioner, the sale may be declared to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in this section.
- (d) If readvertisement and sale occur, any new purchaser shall receive the property or rights to property, free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by the defaulting purchaser shall be forfeited.
- (8) If the commissioner or his *or her* delegate determines that any property seized is liable to perish or become greatly reduced in price or value by keeping, or that the property cannot be kept without great expense, he *or she* shall appraise the value of the property and, if the owner of the property can be readily found, the commissioner or his *or her* delegate shall give him *or her* notice of the determination of the appraised value of the property. The property shall be returned to the owner if, within the time specified in the notice, the owner pays to the commissioner or his *or her* delegate an amount equal to the appraised value, or gives bond in the form, with the sureties, and in the amount as the commissioner or his *or her* delegate determines to be appropriate in the circumstances. If the owner does not pay the amount or furnish the bond in accordance with

this subsection, the commissioner or his *or her* delegate shall as soon as practicable make public sale of the property without regard to the advertisement requirements or the time limitations contained in subsections (3) and (5) of this section.

- (9) No proceedings under this section shall be commenced more than ten (10) years after the assessment becomes final.
- (10) The term "levy" as used in this section shall include the power of distraint and seizure by any means. Except as otherwise provided in KRS 131.510(2)(a), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the commissioner or his *or her* delegate may levy upon property or rights to property, he *or she* may seize and sell the property or rights whether real, personal, tangible or intangible.
- (11) Notwithstanding the provisions of KRS Chapters 45, 45A, and 56, the department may take all necessary steps to provide for the protection, maintenance, or transportation of all property seized by the department pursuant to the provisions of this section, including ~~but not limited to~~ negotiating directly for the procurement of contractual services, including professionals, supplies, materials, equipment, or the leasing of real and personal property. Every effort shall be made to effect a competitively established price for purchases made pursuant to this section. The department shall report any procurements of contractual services, supplies, materials, equipment, or the leasing of real and personal property, to the secretary of the Finance and Administration Cabinet within sixty (60) days of the transaction. Nothing in this section shall preclude the department from complying with the provisions of KRS Chapters 45 and 56 relating to the requirements to report the purchase or lease of real property or equipment to the Capital Projects and Bond Oversight Committee.

➔SECTION 33. A NEW SECTION OF KRS CHAPTER 131 IS CREATED TO READ AS FOLLOWS:

- (1) *If any person liable to pay any tax administered by the department, other than a tax subject to the provisions of Section 18 of this Act, neglects or refuses to pay the tax after demand, the tax due together with all penalties, interest, and other costs applicable provided by law shall be a lien in favor of the Commonwealth of Kentucky. The lien shall attach to all property and rights to property owned or subsequently acquired by the person neglecting or refusing to pay the tax.*
- (2) *The lien imposed by subsection (1) of this section shall remain in force for ten (10) years from the date the notice of tax lien has been filed by the commissioner, or his or her designee with the county clerk of any county or counties in which the taxpayer's business or residence is located, or any county in which the taxpayer has an interest in property.*
- (3) *The tax lien imposed by subsection (1) of this section shall not be valid as against any purchaser, judgment lien creditor, or holder of a security interest or mechanic's lien until notice of the tax lien has been filed by the commissioner or his or her designee with the county clerk of any county or counties in which the taxpayer's business or residence is located, or in any county in which the taxpayer has an interest in property. The recording of the tax lien shall constitute notice of both the original assessment and all subsequent assessments of liability against the same taxpayer. Upon request, the department shall disclose the specific amount of liability at a given date to any interested party legally entitled to the information.*
- (4) *Even though notice of a tax lien has been filed as provided by subsection (3) of this section, and notwithstanding the provisions of KRS 382.520, the tax lien imposed by subsection (1) of this section shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made within forty-five (45) days after the date of tax lien filing or the date the person making the disbursements had actual notice or knowledge of tax lien filing, whichever is earlier, provided the security interest:*
  - (a) *Is in property which:*
    1. *At the time of tax lien filing is subject to the tax lien imposed by subsection (1) of this section; and*
    2. *Is covered by the terms of a written agreement entered into before tax lien filing; and*
  - (b) *Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.*

➔Section 34. KRS 132.193 is amended to read as follows:

- (1) Leased personal property exempt from taxation~~[,]~~ when~~[such property is]~~ held by a natural person, association, or corporation in connection with a business conducted for profit, shall be subject to taxation in the same amount and to the same extent as though the lessee were the owner of the property, except~~[for]~~ personal property used in vending stands operated by blind persons under the auspices of the Office for the Blind.
- (2) Taxes shall be assessed to lessees of exempt personal property and collected in the same manner as taxes assessed to owners of other personal property, except that taxes due under this section shall not become a lien against the personal property. When due, such taxes shall constitute a debt due from the lessee to the state, county, school district, special district, city,~~[or]~~ urban-county government, **charter county, consolidated local government, or unified local government** for which the taxes were assessed and if unpaid shall be recoverable by the state as provided in KRS **Chapter 134**~~[134.500]~~.

➔Section 35. KRS 132.195 is amended to read as follows:

- (1) When any real or personal property which~~[for any reason]~~ is exempt from taxation is leased or possession **is** otherwise transferred to a natural person, association, partnership, or corporation in connection with a business conducted for profit, the leasehold or other interest in the property shall be subject to state and local taxation at the rate applicable to real or personal property levied by each taxing jurisdiction.
- (2) Subsection (1) of this section shall not apply to interests in:
  - (a) Industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit or tax-exempt statutory authority under the provisions of KRS Chapter 103, the taxation of which is provided for under the provisions of KRS 132.020 and 132.200;
  - (b) Federal property for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed;
  - (c) Property of any state-supported educational institution;
  - (d) Vending stand locations and facilities operated by blind persons under the auspices of the Office for the Blind, regardless of whether the property is owned by the federal, state, or a local government; or
  - (e) Property of any free public library.
- (3) Taxes shall be assessed to lessees of exempt real or personal property and collected in the same manner as taxes assessed to owners of other real or personal property, except that taxes due under this section shall not become a lien against the property. When due, such taxes shall constitute a debt due from the lessee to the state, county, school district, special district, or urban-county government for which the taxes were assessed and if unpaid shall be recoverable by the state as provided in KRS **Chapter 134**~~[134.500]~~.

➔Section 36. KRS 132.220 is amended to read as follows:

- (1)
  - (a) All taxable property and all interests in taxable property, unless otherwise specifically provided by law, shall be listed, assessed, and valued as of January 1 of each year.
  - (b)
    1. It shall be the duty of **the holder of the first freehold estate**~~[all persons owning or having any interest]~~ in any real property taxable in this state to list or have listed the property with the property valuation administrator of the county where it is located between January 1 and March 1 in each year, except as otherwise provided by law.
    2. It shall be the duty of all persons owning~~[or having any interest in]~~ any tangible personal property taxable in this state to list or have listed the property with the property valuation administrator of the county of taxable situs or with the department between January 1 and May 15 in each year, except as otherwise prescribed by law.
    3. All persons in whose name property is properly assessed shall remain bound for the tax, notwithstanding they may have sold or parted with it.
- (2) Any taxpayer may list his **or her** property in person before the property valuation administrator or his deputy, or may file a property tax return by first class mail. Any real property correctly and completely described in the assessment record for the previous year, or purchased during the preceding year and for which a value was stated in the deed according to the provisions of KRS 382.135, may be considered by the owner to be listed for the current year if no changes that could potentially affect the assessed value have been made to the property. However, if requested in writing by the property valuation administrator or by the department, any real property owner shall submit a property tax return to verify existing information or to provide additional

information for assessment purposes. Any real property which has been underassessed as a result of the owner intentionally failing to provide information, or intentionally providing erroneous information, shall be subject to revaluation, and the difference in value shall be assessed as omitted property under the provisions of KRS 132.290.

- (3) If the owner fails to list the property, the property valuation administrator shall nevertheless assess it. The property valuation administrator may swear witnesses in order to ascertain the person in whose name to make the list. The property valuation administrator, his *or her* employee, or employees of the department may physically inspect and revalue land and buildings in the absence of the property owner or resident. The exterior dimensions of buildings may be measured and building photographs may be taken; however, with the exception of buildings under construction or not yet occupied, an interior inspection of residential and farm buildings, and of the nonpublic portions of commercial buildings shall not be conducted in the absence or without the permission of the owner or resident.
- (4) Real property shall be assessed in the name of the owner, if ascertainable by the property valuation administrator, otherwise in the name of the occupant, if ascertainable, and otherwise to "unknown owner." The undivided real estate of any deceased person may be assessed to the heirs or devisees of the person without designating them by name.
- (5)
  - (a) Real property tax roll entries for which tax bills have not been collected at the expiration of the one (1) year tolling period provided for in *Section 16 of this Act* [~~KRS 134.470~~], and for which the property valuation administrator cannot physically locate and identify the real property, shall be deleted from the tax roll and the assessment shall be exonerated.
  - (b) The property valuation administrator shall keep a record of these exonerations, which shall be open under the provisions of KRS 61.870 to 61.884.
  - (c) If, at any time, one of these entries is determined to represent a valid parcel of property it shall be assessed as omitted property under the provisions of KRS 132.290.
  - (d) Notwithstanding other provisions of the Kentucky Revised Statutes to the contrary, any loss of ad valorem tax revenue suffered by a taxing district due to the exoneration of these uncollectable tax bills may be recovered through an adjustment in the tax rate for the following year.
- (6) All real property exempt from taxation by Section 170 of the Constitution shall be listed with the property valuation administrator in the same manner and at the same time as taxable real property. The property valuation administrator shall maintain an inventory record of the tax-exempt property, but the property shall not be placed on the tax rolls. A copy of this tax-exempt inventory shall be filed annually with the department within thirty (30) days of the close of the listing period. This inventory shall be in the form prescribed by the department. The department shall make an annual report itemizing all exempt properties to the Governor and the Legislative Research Commission within sixty (60) days of the close of the listing period.
- (7) Each property valuation administrator, under the direction of the department, shall review annually all real property listed with him *or her* under subsection (6) of this section and claimed to be exempt from taxation by Section 170 of the Constitution. The property valuation administrator shall place on the tax rolls all property that is not exempt. Any property valuation administrator who fails to comply with this subsection shall be subject to the penalties prescribed in KRS 132.990(2).

➔Section 37. KRS 132.290 is amended to read as follows:

- (1) Any real property which has not been listed for taxation, for any year in which it is taxable, by the time the board of assessment appeals completes its work for that year shall be deemed omitted property. Any personal property which has not been listed for taxation, for any year in which it is taxable, by the due date of that year shall be deemed omitted property.
- (2) All omitted property shall be assessed retroactively in the manner provided by law at any time within five (5) years from the date when it became omitted, but the lien thereby accruing on any such property, except real property, shall not prejudice the rights of bona fide purchasers acquired in the meantime.
- (3) All omitted property voluntarily listed shall be subject to a penalty of ten percent (10%) of the amount of taxes, and interest at the tax interest rate as defined in KRS 131.010(6) from the date when the taxes would have become delinquent had the property been listed as required by law, until the date the tax bill is paid.

- (4) All omitted property not voluntarily listed shall be subject to a penalty of twenty percent (20%) of the amount of taxes, and interest at the tax interest rate as defined in KRS 131.010(6) from the date when the taxes would have become delinquent had the property been listed as required by law, until the date the tax bill is paid.
- (5) When the property is assessed retroactively by action prosecuted in the manner provided by KRS 132.330 and 132.340, an additional penalty of twenty percent (20%) of the amount of the original tax, interest and penalty may be collected for the purpose provided in *Section 26 of this Act* ~~[KRS 134.400]~~ and paid into the State Treasury. All other penalties and interest shall be distributed in the same manner as the tax.
- (6) ***Taxes on omitted property shall be due and payable as provided in Section 2 of this Act.***

➔Section 38. KRS 132.370 is amended to read as follows:

- (1) There shall be a property valuation administrator in each county in lieu of a county assessor. Property valuation administrators shall be state officials and all deputies and assistants of their offices shall be unclassified state employees.
- (2) Property valuation administrators shall be elected in the year in which county elections are held and shall enter upon the discharge of the duties of their office on the first Monday in December after their election and continue in office for a period of four (4) years, and until the election and qualification of their successors. Property valuation administrators shall possess the qualifications required by Section 100 of the Constitution and by KRS 132.380 and shall be eligible for reelection.
- (3) The property valuation administrators and all deputies and assistants of their offices who qualify as full-time employees shall be eligible for participation in the provisions of KRS 18A.205, 18A.230 to 18A.355, and 61.510 to 61.705.
- (4) A property valuation administrator may be removed from office by the Circuit Court of his *or her* county, upon petition of any taxpayer, or by the commissioner of revenue for ~~[any of the following grounds:]~~ willful disobedience of any just or legal order of the department, or for misfeasance or malfeasance in office or willful neglect in the discharge of his *or her* official duties, including but not limited to intentional underassessment or overassessment of properties and chronic underassessment of properties. For purposes of this section and *Section 45 of this Act* ~~[KRS 134.385]~~, "chronic underassessment" *means* ~~[shall mean]~~ a widespread pattern and practice of assessing properties at levels substantially below fair market value which persists for a period of two (2) or more years as disclosed by randomly selected sample appraisals conducted under the provisions of KRS 133.250, special audits conducted pursuant to *Section 45 of this Act* ~~[KRS 134.385]~~, or other means.
- (5) If the commissioner determines that a property valuation administrator should be removed from office, the property valuation administrator shall be notified in writing, and the notice of intent to remove shall state the specific reasons for removal. The notice shall also advise the property valuation administrator of his *or her* right to a preremoval conference and an administrative hearing.
- (6) A property valuation administrator may request a preremoval conference to appear with or without counsel before the commissioner or his *or her* designee to answer the charges against him *or her*. The preremoval conference shall be requested in writing within six (6) working days of the date on which the notice of intent to remove is received, and a preremoval conference shall be scheduled within seven (7) working days of the date on which the request is received. The commissioner or his *or her* designee shall render a decision within five (5) working days of the conclusion of the preremoval conference. Failure of a property valuation administrator to request a preremoval hearing shall not waive his *or her* right to contest his *or her* removal through an administrative hearing.
- (7) If an action to remove a property valuation administrator is initiated by the commissioner of revenue, the property valuation administrator shall have the right to appeal and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. Appeal of the final order of the commissioner of revenue may be filed in a Circuit Court of an adjacent judicial circuit in accordance with KRS Chapter 13B, notwithstanding the provisions of KRS Chapter 18A.
- (8) If a property valuation administrator is removed from office as provided in subsections (4) to (7) of this section, he *or she* shall be ineligible to serve in the office at any future date and shall forfeit any and all certification from the Department of Revenue pertaining to the office.
- (9) Notwithstanding the provisions of KRS 18A.110(5)(c), the department shall promulgate administrative regulations allowing property valuation administrators and their deputies to receive lump-sum payments for

accrued annual leave and compensatory time when separated from employment because of termination by the employer, resignation, retirement, or death.

➔Section 39. KRS 132.486 is amended to read as follows:

- (1) The Department of Revenue shall develop and administer a centralized ad valorem assessment system for tangible personal property. This system shall be designed to provide on-line computer terminals and accessory equipment in every property valuation administrator's office in the state in order to create and maintain a centralized personal property tax roll database.
- (2) Appeals of personal property assessments shall not be made to the county board of assessment appeals. Personal property taxpayers shall be served notice under the provisions of KRS 132.450(4) and shall have the protest and appeal rights granted under the provision of KRS 131.110.
- (3) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in a protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of *subsection (6) of Section 2 of this Act* ~~[KRS 134.390]~~ shall apply to the tax bill.

➔Section 40. KRS 132.820 is amended to read as follows:

- (1) The department shall value and assess unmined coal, oil, and gas reserves, and any other mineral or energy resources which are owned, leased, or otherwise controlled separately from the surface real property at no more than fair market value in place, considering all relevant circumstances. Unmined coal, oil, and gas reserves and other mineral or energy resources shall in all cases be valued and assessed by the Department of Revenue as a distinct interest in real property, separate and apart from the surface real estate unless:
  - (a) The unmined coal, oil, and gas reserves, and other mineral or energy resources are owned in their entirety by the surface owner;
  - (b) The surface owner is neither engaged in the severance, extraction, processing, or leasing of mineral or other energy resources nor is he an affiliate of a person who engages in those activities; and
  - (c) The surface is being used by the surface owner primarily for the purpose of raising for sale agricultural crops, including planted and managed timberland, or livestock or poultry.

For purposes of this section, "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another individual, partnership, committee, association, corporation, or any other organization or group of persons.

- (2) Each owner or lessee of property assessed under subsection (1) of this section shall annually, between January 1 and April 15, file a return with the department in a form as the department may prescribe. Other individuals or corporations having knowledge of the property defined in subsection (1) of this section gained through contracting, extracting, or similar means may also be required by the department to file a return.
- (3) Any property subject to assessment by the department under subsection (1) of this section which has not been listed for taxation, for any year in which it is taxable, by April 15 of that year shall be omitted property.
- (4) After the valuation of unmined minerals or other energy sources has been finally fixed by the department, the department shall certify to the county clerk of each county the amount liable for county, city, or district taxation. The report shall be filed by the county clerk in his office, and shall be certified by the county clerk to the proper collecting officer of the county, city, or taxing district for collection.
- (5) The notification, protest, and appeal of assessments under subsection (1) of this section shall be made pursuant to the provisions of KRS Chapter 131.
- (6) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of *subsection (6) of Section 2 of this Act* ~~[KRS 134.390]~~ shall apply to the tax bill.

- (7) The collection of tax bills generated from the assessments made under subsection (1) of this section shall be made pursuant to the provisions of KRS Chapter 134.

➔Section 41. KRS 132.825 is amended to read as follows:

- (1) It shall be the duty of all persons providing communications services or multichannel video programming services defined under KRS 136.602 owning or having any interest in tangible personal property in this state to list or have listed the property with the department between January 1 and May 15 in each year reporting the full details, a correct description of the property and its value.
- (2) The department shall have sole power to value and assess all tangible personal property of multichannel video programming service providers and communications service providers. Such property shall be valued and assessed in accordance with procedures established for locally assessed tangible property. The department shall develop forms for reporting.
- (3) Providers of multichannel video programming services or communications services shall not be required to list, and the department shall not assess intangible property as defined in KRS 132.010.
- (4) It is the intent of KRS 136.600 to 136.660 to relieve communications service providers and multichannel video programming service providers from the tax liability imposed under KRS 136.120 by:
- (a) Requiring real, tangible, and intangible property owned by communications service providers and multichannel video programming service providers to be assessed and taxed in the same manner as real, tangible and intangible property of all other taxpayers under KRS Chapter 132 excluding KRS 132.030; and
  - (b) Replacing revenues received from communications service providers and multichannel video programming service providers under KRS 136.120, attributable to the franchise portion of operating property as defined in KRS 136.115, with the levy imposed under KRS 136.616.

To the extent that any tangible or intangible property was considered a part of the franchise portion of operating property under KRS 136.115 and 136.120 for tax periods ending prior to January 1, 2006, for a communications service provider or a multichannel video programming service provider, such property shall be exempt from taxation under KRS Chapter 132 and shall not be listed, valued or assessed under this section for tax periods beginning on or after December 31, 2005.

- (5) It is also the intent of KRS 136.600 to 136.660 that for communications service providers and multichannel video programming service providers the following items, to the extent these items are intangible property, shall be exempt from taxation under KRS Chapter 132 and shall not be listed, valued, or assessed by the department or local jurisdictions. The items include but shall not be limited to:
- (a) Franchises;
  - (b) Certificates of public convenience and necessity;
  - (c) Licenses;
  - (d) Authorizations issued by the Federal Communications Commission or any state public service commission;
  - (e) Customer lists;
  - (f) Assembled labor force;
  - (g) Goodwill;
  - (h) Managerial skills;
  - (i) Business enterprise value;
  - (j) Speculative value; and
  - (k) Any other type of personal property that is not tangible personal property.
- (6) Any person dissatisfied with or aggrieved by the finding or ruling of the department may appeal the finding or ruling in the manners provided in KRS 131.110.
- (7) All persons in whose name property is assessed shall remain bound for the tax, notwithstanding that they may have sold or parted with it.

- (8) The department shall allocate the assessed value of property described in subsection (1) of this section among the counties, cities, and taxing districts. The assessed value shall be allocated to the county, city, or taxing district where the property is situated.
- (9) The department shall certify, unless otherwise specified, to the county clerk of each county in which any of the property assessment listed by the corporation is liable to local taxation, the amount of tangible personal property liable for county, city, or district tax.
- (10) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation that the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of **subsection (6) of Section 2 of this Act** ~~[KRS 134.390]~~ shall apply to the tax bill.
- (11) The certification of valuation shall be filed by each county clerk in the clerk's office and shall be certified by the county clerk to the proper collecting officer of the county, city, or taxing district for collection. Any district that has the value certified by the department shall pay an annual fee to the department that represents an allocation of the department's operating and overhead expenses incurred in generating the valuations. This fee shall be determined by the department and shall apply to valuations for tax periods beginning on or after January 1, 2005.

➔Section 42. KRS 133.120 is amended to read as follows:

- (1) (a) Any taxpayer desiring to appeal an assessment on real property made by the property valuation administrator shall first request a conference with the property valuation administrator or his **or her** designated deputy. The conference shall be held prior to or during the inspection period provided for in KRS 133.045.
- (b) Any person receiving compensation to represent a property owner at a conference with the property valuation administrator for a real property assessment shall be an attorney, a certified public accountant, a certified real estate broker, a Kentucky licensed real estate broker, an employee of the property owner, or any other individual possessing a professional appraisal designation recognized by the department. A person representing a property owner before the property valuation administrator shall present written authorization from the property owner which sets forth his **or her** professional capacity and shall disclose to the property valuation administrator any personal or private interests he **or she** may have in the matter, including any contingency fee arrangements. Provided however, attorneys shall not be required to disclose the terms and conditions of any contingency fee arrangement.
- (c) During this conference, the property valuation administrator or his **or her** deputy shall provide an explanation to the taxpayer of the constitutional and statutory provisions governing property tax administration, including the appeal process, as well as an explanation of the procedures followed in deriving the assessed value for the taxpayer's property.
- (d) The property valuation administrator or his **or her** deputy shall keep a record of each conference which shall include ~~[,]~~ but ~~shall~~ not be limited to ~~[,]~~ the initial assessed value, the value claimed by the taxpayer, an explanation of any changes offered or agreed to by each party, and a brief account of the outcome of the conference.
- (e) At the request of the taxpayer, the conference may be held by telephone.
- (2) (a) Any taxpayer still aggrieved by an assessment on real property made by the property valuation administrator after complying with the provisions of subsection (1) of this section may appeal to the board of assessment appeals.
- (b) The taxpayer shall appeal his **or her** assessment by filing in person or sending a letter or other written petition **to the county clerk** stating the reasons for appeal, identifying the property for which the appeal is filed, and stating ~~[to the county clerk]~~ the taxpayer's opinion of the fair cash value of the property.
- (c) The appeal shall be filed no later than one (1) workday following the conclusion of the inspection period provided for in KRS 133.045.

- (d) The county clerk shall notify the department of all assessment appeals and of the date and times of the hearings.
  - (e) The board of assessment appeals may review and change any assessment made by the property valuation administrator upon recommendation of the county judge/executive, mayor of any city using the county assessment, or the superintendent of any school district in which the property is located, if the recommendation is made to the board in writing specifying the individual properties recommended for review and is made no later than one (1) work day following the conclusion of the inspection period provided for in KRS 133.045, or upon the written recommendation of the department. If the board of assessment appeals determines that the assessment should be increased, it shall give the taxpayer notice in the manner required by subsection (4) of KRS 132.450, specifying a date when the board will hear the taxpayer, if he *or she* so desires, in protest of an increase.
  - (f) Any real property owner who has listed his *or her* property with the property valuation administrator at its fair cash value may ask the county board of assessment appeals to review the assessments of real properties he *or she* believes to be assessed at less than fair cash value, if he *or she* specifies in writing the individual properties for which the review is sought and factual information upon which his *or her* request is based, such as comparable sales or cost data and if the request is made no later than one (1) work day following the conclusion of the inspection period provided for in KRS 133.045.
  - (g) Nothing in this section shall be construed as granting any property owner the right to request a blanket review of properties or the board the power to conduct such a review.
- (3) (a) The board of assessment appeals shall hold a public hearing for each individual taxpayer appeal in protest of the assessment by the property valuation administrator filed in accordance with the provisions of subsection (2) of this section, and after hearing all the evidence, shall fix the assessment of the property at its fair cash value.
- (b) The department may be present at the hearing and present any pertinent evidence as it pertains to the appeal.
  - (c) The taxpayer shall provide factual evidence to support his *or her* appeal. If the taxpayer fails to provide reasonable information pertaining to the value of the property requested by the property valuation administrator, the department, or any member of the board, his *or her* appeal shall be denied.
  - (d) This information shall include ~~but shall~~ not be limited to ~~the~~ the physical characteristics of land and improvements, insurance policies, cost of construction, real estate sales listings and contracts, income and expense statements for commercial property, and loans or mortgages.
  - (e) The board of assessment appeals shall only hear and consider evidence which has been submitted to it in the presence of both the property valuation administrator or his *or her* designated deputy and the taxpayer or his *or her* authorized representative.
- (4) Any person receiving compensation to represent a property owner in an appeal before the board shall be an attorney, a certified public accountant, a certified real estate appraiser, a Kentucky licensed real estate broker, an employee of the taxpayer, or any other individual possessing a professional appraisal designation recognized by the department. A person representing a property owner before the county board of assessment appeals shall present a written authorization from the property owner which sets forth his *or her* professional capacity and shall disclose to the county board of assessment appeals any personal or private interests he *or she* may have in the matter, including any contingency fee arrangements. Provided however, attorneys shall not be required to disclose the terms and conditions of any contingency fee arrangement.
- (5) The board shall provide a written opinion justifying its action for each assessment either decreased or increased in the record of its proceedings and orders required in KRS 133.125 on forms or in a format provided or approved by the department.
- (6) The board shall report to the property valuation administrator any real property omitted from the tax roll. The property valuation administrator shall assess the property and immediately give notice to the taxpayer in the manner required by KRS 132.450(4), specifying a date when the board of assessment appeals will hear the taxpayer, if he *or she* so desires, in protest of the action of the property valuation administrator.
- (7) The board of assessment appeals shall have power to issue subpoenas, compel the attendance of witnesses, and adopt rules and regulations concerning the conduct of its business. Any member of the board shall have power to administer oaths to any witness in proceedings before the board.

- (8) The powers of the board of assessment appeals shall be limited to those specifically granted by this section.
- (9) No appeal shall delay the collection or payment of any taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which he *or she* claims as true value and stated in the petition of appeal filed in accordance with the provisions of subsection (1) of this section. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6) from the date when the tax would have become due if no appeal had been taken. The provisions of *subsection (6) of Section 2 of this Act* ~~[KRS 134.390]~~ shall apply to the tax bill.
- (10) Any member of the county board of assessment appeals may be required to give evidence in support of the board's findings in any appeal from its actions to the Kentucky Board of Tax Appeals. Any persons aggrieved by a decision of the board, including the property valuation administrator, taxpayer, and department, may appeal the decision to the Kentucky Board of Tax Appeals. Any taxpayer failing to appeal to the county board of assessment appeals, or failing to appear before the board, either in person or by designated representative, shall not be eligible to appeal directly to the Kentucky Board of Tax Appeals.
- (11) The county attorney shall represent the interest of the state and county in all hearings before the board of assessment appeals and on all appeals prosecuted from its decision. If the county attorney is unable to represent the state and county, he or *she* the fiscal court shall arrange for substitute representation.
- (12) Taxpayers shall have the right to make audio recordings of the hearing before the county board of assessment appeals. The property valuation administrator may make similar audio recordings only if prior written notice is given to the taxpayer. The taxpayer shall be entitled to a copy of the department's recording as provided in KRS 61.874.
- (13) The county board of assessment appeals shall physically inspect a property upon the request of the property owner or property valuation administrator.

➔Section 43. KRS 133.180 is amended to read as follows:

- (1) When the department ~~[of Revenue]~~ has completed its action on the assessment of property in any county, it shall immediately certify to the county clerk the assessment and the amount of taxes due. The department ~~[of Revenue]~~ shall charge the amount of taxes due from the county to the sheriff of the county. When any item of property is in process of appeal and the valuation has not been finally determined, the certification of such property shall be based on the valuation claimed by the taxpayer as the true value. The county clerk shall affix the certification to the tax books and enter it of record in the order book, and it shall be the sheriff's or collector's warrant for the collection of taxes.
- (2) ***Where provision is not otherwise made for the collection of taxes, the assessment or proportion thereof allocable to a local taxing district shall be certified to the county clerk in which the taxing district is located, for collection as provided by law.***

➔Section 44. KRS 133.220 is amended to read as follows:

- (1) The department annually shall furnish to each county clerk tax bill forms designed for adequate accounting control sufficient to cover the taxable property on the rolls.
- (2) After receiving the forms, the county clerk shall prepare for the use of the sheriff or collector a correct tax bill for each taxpayer in the county whose property has been assessed and whose valuation is included in the certification provided in KRS 133.180. If the bills are bound, the cost of binding shall be paid out of the county levy. Each tax bill shall show the rate of tax upon each one hundred dollars (\$100) worth of property for state, county, and school purposes; the name of the taxpayer and his *or her* mailing address; the number of acres of farm land and its value; the number of lots and their value; the amount and value of notes and money; the value of mixed personal property; ~~[and]~~ the total amount of taxes due the state, county, school ~~district~~ ~~[fund]~~, and *any other taxing district for which the sheriff collects taxes; and shall include a statement that notifies the taxpayer that costs and fees increase substantially if the taxes become delinquent* ~~[levies]~~. Provision shall be made for the sheriff to have a stub, duplicate, or other proper evidence of receipt of payment of each tax bill.
- (3) Tax bills prepared in accordance with the certification of the department shall be delivered to the sheriff or collector by the county clerk before September 15 of each year. The clerk shall take a receipt showing the number of tax bills and the total amount of tax due each taxing district as shown upon the tax bills. The receipt shall be signed and acknowledged by the sheriff or collector before the county clerk, filed with the county

judge/executive, and recorded in the order book of the county judge/executive in the manner required by law for recording the official bond of the sheriff.

- (4) Upon delivery to him *or her* of the tax bills, the sheriff or collector shall mail a notice to each taxpayer, showing the total amount of taxes due the state, county, school ~~district~~~~fund~~, and *any other taxing district for which the sheriff collects taxes*~~levies~~, the date on which the taxes are due, and any discount to which the taxpayer may be entitled upon payment of the taxes prior to a designated date. ***The sheriff shall not mail tax notices prior to September 15.***
- (5) All notices returned as undeliverable shall be submitted no later than the following work day to the property valuation administrator. The property valuation administrator shall correct inadequate or erroneous addresses if the information to do so is available and, if property has been transferred, shall determine the new owner and the current mailing address, or the in-care-of address reflected in the deed as required by KRS 382.135. The property valuation administrator shall return the corrected notices to the sheriff or collector on a daily basis as corrections are made, but no later than fifteen (15) days after receipt. Uncorrected notices shall be submitted to the department by the property valuation administrator.

➔Section 45. KRS 133.250 is amended to read as follows:

- (1) The department~~of Revenue~~ shall conduct sales-assessment ratio studies for each county and shall submit the ratio to each property valuation administrator by September 1 of each year or within thirty (30) days of submission of the property valuation administrator's final recapitulation to the department as provided for in KRS 133.125, whichever date is later. Randomly selected sample appraisals shall be conducted by the department~~of Revenue~~ for each class of real property in each county no less than once every two (2) years to supplement sales data used in the assessment ratio study and to verify and enhance the statistical validity of the ratio study in determining measures of central tendency and variation.
- (2) The property valuation administrator shall begin revaluation of property in his *or her* county, in preparation for the following year's property assessment, immediately following submission of the final recapitulation to the department~~of Revenue~~ as provided for in KRS 133.125.
- (3) By January 30 of each year, the department~~of Revenue~~ shall cause to be published in the newspaper of largest circulation in each county, a listing of the percentage of fair cash value attainment of real property assessments as calculated by assessment ratio studies which shall be conducted by the Department of Revenue.
- (4) ***The department shall conduct a special audit to determine the presence or absence of chronic underassessment, as defined in Section 39 of this Act, in any county for which the sales-assessment ratio studies conducted under the provisions of this section indicates a ratio below eighty percent (80%) for two (2) consecutive calendar years. The audit may be conducted through the use of randomly-selected sample appraisals or other means reasonably calculated to present an accurate determination of assessment practices in the county.***

➔Section 46. KRS 135.040 is amended to read as follows:

- (1) On the return of "no property found" on an execution issued upon a judgment in favor of the state, the Department of Revenue may institute equitable proceedings in the Franklin Circuit Court or any other court of competent jurisdiction, in the name of the state and on the relation of the commissioner of revenue. The choses in action or other equitable estate of the delinquent shall be subjected to the payment of the amount due on any such execution.
- (2) On the return to the fiscal court *or the county clerk* of any tax bill as uncollectible, a like suit may be instituted in the name of the state on the relation of the commissioner of revenue in any court of competent jurisdiction, and the choses in action or other equitable estate of the delinquent may be subjected to the amount due on any such tax bill. In such proceedings attachment may issue and other proceedings may be taken as are authorized on the return of "no property found" on an execution in favor of individuals.
- (3) The county attorneys of the respective counties shall assist the Department of Revenue in prosecuting the actions mentioned in this section.
- (4) No action shall be maintained under the provisions of subsection (1) of this section when the last execution issued has been returned "no property found" more than ten (10) years before the institution of the action, nor shall an action be maintained on the uncollectible tax bill under the provisions of subsection (2) of this section more than five (5) years after the date of the return by the sheriff or collector.

- (5) Every person against whom an execution has been returned "no property found" and upon which an equitable action is instituted, as provided in subsection (1) of this section, shall be liable for a penalty of twenty percent (20%) of the amount due on the execution. The penalty may be recovered in the action, with the amount due on the execution. The penalty shall go to the delinquent tax fund provided for under *Section 26 of this Act* ~~{KRS 134.400}~~, unless the county attorney assists in the prosecution, in which case one-half (1/2) shall go to *the county attorney* ~~{him}~~.

➔Section 47. KRS 136.180 is amended to read as follows:

- (1) The Department of Revenue shall, immediately after fixing the assessed value of the operating property and other property of a public service corporation for taxation, notify the corporation of the valuation and the amount of assessment for state and local purposes. When the valuation has been finally determined, the department shall immediately certify, unless otherwise specified, to the county clerk of each county in which any of the operating property or nonoperating tangible property assessment of the corporation is liable to local taxation, the amount of property liable for county, city, or district tax.
- (2) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of *subsection (6) of Section 2 of this Act* ~~{KRS 134.390}~~ shall apply to the tax bill.
- (3) The Department of Revenue shall compute annually a multiplier for use in establishing the local tax rate for the operating property of railroads or railway companies that operate solely within the Commonwealth. The applicable local tax rates on the operating property shall be adjusted by the multiplier. The multiplier shall be calculated by dividing the statewide locally taxable business tangible personal property by the total statewide business tangible personal property.
- (4) The Department of Revenue shall annually calculate an aggregate local rate for each local taxing district to be used in determining local taxes to be collected for railroad carlines. The rate shall be the statewide tangible tax rate for each type of local taxing district multiplied by a fraction, the numerator of which is the commercial and industrial tangible property assessment subject to full local rates and the denominator of which is the total commercial and industrial tangible personal property assessment. Effective January 1, 1994, state and local taxes on railroad carline property shall become due forty-five (45) days from the date of notice and shall be collected directly by the Department of Revenue. The local taxes collected by the Department of Revenue shall be distributed to each local taxing district levying a tax on railroad carlines based on the statewide average rate for each type of local taxing district. However, prior to distribution any fees owed to the Department of Revenue by any local taxing district under the provisions of subsection (6) of this section shall be deducted.
- (5) The Department of Revenue shall bill, collect, and distribute all state and local property taxes for common carrier water transportation companies. Any fees owed to the Department of Revenue by any local taxing district shall be deducted before any distribution is made to any local taxing district under the provisions of this subsection.
- (6) The certification of valuation shall be filed by each county clerk in his office, and shall be certified by the county clerk to the proper collecting officer of the county, city, or taxing district for collection. Any district which has the value certified by the department shall pay an annual fee to the department which represents an allocation of department operating and overhead expenses incurred in generating the valuations. This fee shall be determined by the department and shall apply to valuations for tax periods beginning on or after December 31, 1981.

➔Section 48. KRS 136.1804 is amended to read as follows:

- (1) The department shall notify the corporation of the assessed value of its watercraft by July 1 of each year. The corporation shall have forty-five (45) days from the date of the department's notice of assessment to protest as provided by KRS 131.110.
- (2) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The corporation shall pay to the department all state and local taxing district taxes due on the undisputed value of its watercraft as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the corporation shall be billed for any additional tax and interest at the tax interest rate as defined in

KRS 131.010(6) from the date the tax would have become due if the assessment had not been appealed. The provisions of *subsection (6) of Section 2 of this Act* ~~[KRS 134.390]~~ shall apply to the tax bill.

- (3) The state and local taxing district taxes on the watercraft are due forty-five (45) days from the date of notice of assessment. The tangible property taxes on watercraft shall be collected in accordance with the provisions of *KRS Chapter 134* ~~[KRS 134.020]~~.
- (4) The state rate of taxation on watercraft shall be forty-five cents (\$0.45) upon each one hundred dollars (\$100) of assessed value of the watercraft.
- (5) The department shall annually calculate an aggregate local rate, which shall be imposed upon each one hundred dollars (\$100) of assessed value of the watercraft.
  - (a) The aggregate local rate shall be the sum of each local personal property tax rate for each local taxing district multiplied by a fraction, the numerator of which shall be the length of the navigable waterways in the local taxing district and the denominator of which shall be the total of the length of all navigable waterways in this state. Both the numerator and the denominator shall be adjusted, if necessary, by paragraph (b) of this subsection.
  - (b) For purposes of computing the local property tax rate in paragraph (a) of this section, the length of the navigable waterways of the Green River shall be reduced by fifty percent (50%) and the length of the navigable waterways of the Kentucky River shall be reduced by seventy-five percent (75%).
- (6) The watercraft taxes collected for local taxing districts by the department shall be distributed to each local taxing district based upon the local taxing district's fractional portion of the amount calculated in subsection (5) of this section.
- (7) Prior to distribution of taxes to local taxing districts, the department shall retain an administrative fee of one percent (1%) of the amount due each district. The fee imposed by this subsection shall have no effect upon the discount provided to taxpayers pursuant to *Section 2 of this Act* ~~[KRS 134.020(2)]~~.

➔Section 49. KRS 136.1877 is amended to read as follows:

The provisions of this section shall apply to assessments made prior to January 1, 2007.

- (1) The Department of Revenue shall immediately, after fixing the assessed value of the trucks, tractors, trailers, semitrailers, and buses, notify the taxpayer of the valuation determined. Any taxpayer who has been assessed by the department in the manner outlined in KRS 136.1873 shall have forty-five (45) days from the date of the department's notice of the tentative assessment to protest as provided by KRS 131.110.
- (2) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The taxpayer shall pay all state, county, and district taxes due on the valuation which the taxpayer claims as the true value as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the taxpayer shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6), from the date the tax would have become due if no appeal had been taken. The provisions of *subsection (6) of Section 2 of this Act* ~~[KRS 134.390]~~ shall apply to the tax bill.
- (3) The state and local taxes on the property are due forty-five (45) days from the date of notice and shall be collected directly by the Department of Revenue.
- (4) The Department of Revenue shall annually calculate an aggregate local rate to be used in determining the local taxes to be collected. The rate shall be the statewide average motor vehicle tax rate for each type of local taxing district multiplied by a fraction, the numerator of which is the commercial and industrial tangible personal property assessment subject to full local rates and the denominator of which is the total commercial and industrial tangible personal property assessment.
- (5) The local taxes collected by the Department of Revenue shall be distributed to each local taxing district levying a tax on motor vehicles based on the statewide average rate for each type of local taxing district. However, prior to distribution any fees owed to the Department of Revenue by any local taxing district under the provisions of KRS 136.180(6) shall be deducted.

➔Section 50. KRS 136.320 is amended to read as follows:

- (1) Each life insurance company incorporated under the laws of and doing business in Kentucky shall value as of January 1 and report to the Department of Revenue by April 1 each year, on forms prescribed by the Department of Revenue, the following:

- (a) The fair cash value of the company's intangible personal property, hereinafter referred to as "capital," consisting of all money in hand, shares of stock, notes, bonds, accounts, and other credits, exclusive of due and deferred premiums, whether secured by mortgage, pledge, or otherwise, or unsecured.
  - (b) The fair cash value of the company's intangible personal property exempt from taxation by law.
  - (c) The aggregate amount of the company's reserves, reduced by the amount of due and deferred premiums, maintained in accordance with the applicable provisions of KRS 304.6-040 and 304.6-130 to 304.6-180, on all outstanding policies and contracts supplementary thereto.
  - (d) Other information as may be required by the Department of Revenue to accurately determine the fair cash value of each company's "taxable capital" and "taxable reserves."
- (2) Based on information supplied by each company and other information that may be available, the Department of Revenue shall value each company's "taxable capital" and "taxable reserves" as follows:
- (a) "Taxable capital" shall be determined by deducting "taxable reserves" from "capital," less exempt intangible personal property.
  - (b) "Taxable reserves" shall be determined by multiplying the aggregate amount of reserves as computed in subsection (1)(c) of this section by the percentage determined by dividing "capital," less exempt intangible personal property, by "capital," including exempt intangible personal property.
- (3) (a) An annual tax for state purposes shall be imposed against the fair cash value of "taxable capital" for calendar years beginning before 2000, at a rate of seventy cents (\$0.70) on each one hundred dollars (\$100).
- (b) An annual tax for state purposes shall be imposed against every company making an election pursuant to KRS 136.335 to be taxed under this section, against the fair cash value of taxable capital for calendar years beginning in 2000 as follows:
- 1. For calendar year 2000, fifty-six cents (\$0.56) on each one hundred dollars (\$100);
  - 2. For calendar year 2001, forty-two cents (\$0.42) on each one hundred dollars (\$100);
  - 3. For calendar year 2002, twenty-eight cents (\$0.28) on each one hundred dollars (\$100);
  - 4. For calendar year 2003, fourteen cents (\$0.14) on each one hundred dollars (\$100); and
  - 5. For calendar year 2004 and each calendar year thereafter, one tenth of one cent (\$0.001) on each one hundred dollars (\$100).
- (c) An annual tax for state purposes shall be imposed at a rate of one-tenth of one cent (\$0.001) on each one hundred dollars (\$100) of the fair cash value of "taxable reserves".
- (d) Beginning in tax year 2004 an insurer may offset the tax liability imposed under this subsection against the tax liability imposed under subsection (4) of this section.
- (4) For calendar year 2000, and each calendar year thereafter, every company subject to the tax imposed by subsection (3) of this section, and making an election pursuant to KRS 136.335 to be taxed under this section, shall pay the following rates of tax upon each one hundred dollars (\$100) of premium receipts:
- (a) For calendar year 2000, thirty-eight cents (\$0.38);
  - (b) For calendar year 2001, seventy-two cents (\$0.72);
  - (c) For calendar year 2002, one dollar and two cents (\$1.02);
  - (d) For calendar year 2003, one dollar and twenty-eight cents (\$1.28); and
  - (e) For calendar year 2004 and each calendar year thereafter, one dollar and fifty cents (\$1.50).

Every company subject to the tax imposed by this subsection shall, by March 1 of each year, return to the Department of Revenue a statement under oath of all premium receipts on business done in this state during the preceding calendar year or since the last return was made. "Premium receipts" includes single premiums, premiums received for original insurance, premiums received for renewal, revival, or reinstatement of the policies, annual and periodical premiums, dividends applied for premiums and additions, and all other

premium payments received on policies that have been written in this state, or on the lives of residents of this state, or out of this state on business done in this state, less returned premiums. No deduction shall be made for dividends on life insurance but dividends on accident and health insurance policies may be deducted.

- (5) The taxes imposed under subsections (3) and (4) of this section shall be in lieu of all excise, license, occupational, or other taxes imposed by the state, county, city, or other taxing district, except as provided in subsections (6) and (7) of this section.
- (6) The county in which the principal office of the company is located may impose a tax of fifteen cents (\$0.15) on each one hundred dollars (\$100) of "taxable capital."
- (7) The city in which the principal office of the company is located may impose a tax of fifteen cents (\$0.15) on each one hundred dollars (\$100) of "taxable capital."
- (8) The Department of Revenue shall by September 1 each year bill each company for the state taxes. It shall immediately certify to the county clerk of the county in which the principal office of the company is located the value of "taxable capital" subject to local taxation. The county clerk shall prepare and deliver a bill to the sheriff for collection of taxes collectible by the sheriff and shall certify the value to all other collecting officers of districts authorized to levy a tax.
- (9) Each company's real and tangible personal property shall be subject to taxation at fair cash value by the state, county, school, and other taxing districts in which the property is located in the same manner and at the same rates as all other property of the same class.
- (10) Taxes on property subject to taxation under this section shall be subject to the same discount and penalties as provided in *Section 2 of this Act* ~~[KRS 134.020]~~ and shall be collected in the same manner as taxes on property locally assessed, except that the state tax on the "taxable capital" and "taxable reserves" shall be collected directly by the Department of Revenue.
- (11) Any taxpayer subject to taxation under this section may protest in the manner provided in KRS 131.110.

➔Section 51. KRS 138.715 is amended to read as follows:

- (1) If any licensee neglects or refuses to make the return or pay the tax at the time provided in KRS 138.685, a penalty of twenty percent (20%) of the tax and interest at the tax interest rate as defined in KRS 131.010(6) from the date when due shall be paid on the tax.
- (2) If any licensee subject to the penalty provided in subsection (1) of this section submits to the ~~department~~ ~~cabinet~~ in writing the reasons for failure to comply with KRS 138.660 to 138.7291 and if the ~~department~~ ~~cabinet~~ finds the reasons sufficient evidence or justifiable cause for modifying the penalty provided in subsection (1) of this section, it may modify the penalty enacted therein to five percent (5%) of the amount of the tax due and delinquent, provided the five percent (5%) penalty may be reduced to one percent (1%) if the violation is the first violation by the taxpayer within the twelve (12) months.
- (3) If the penalties provided by this section are collected by proceedings in court, an additional penalty of twenty percent (20%) shall be collected and distributed as is authorized by *Section 26 of this Act* ~~[KRS 134.400 and 135.060]~~. Whenever any licensee neglects or refuses to make and file any report for any calendar quarter as required by KRS 138.685, or files an incorrect or fraudulent report, the ~~department~~ ~~cabinet~~ shall determine after an investigation the amount of the liability which the licensee has incurred under KRS 138.660 to 138.7291 for any particular quarter and assess and collect the amount of tax and penalties due.
- (4) Any licensee who fails to make any report required under the provisions of KRS 138.660 to 138.7291 within the time allowed may be required to pay a penalty of fifty dollars (\$50) for a first offense, two hundred fifty dollars (\$250) for a second offense, or five hundred dollars (\$500) for any subsequent offense within any four (4) year period. The penalty is to be assessed and collected in the manner provided for the assessment and collection of taxes, or the licensee may be proceeded against in a civil action instigated by the ~~department~~ ~~cabinet~~. In addition, such licensee may be compelled to make the required return.
- (5) In any action for the collection of taxes due under KRS 138.660 to 138.7291 and any penalties or interest imposed in connection therewith, an assessment by the ~~department~~ ~~cabinet~~ of the amount of tax due and the interest or penalties due to the state shall constitute prima facie evidence of the claim of the state and the burden of proof shall be on the licensee to show that the assessment was incorrect or contrary to law.

➔Section 52. KRS 138.880 is amended to read as follows:

- (1) Each Commonwealth's attorney or county attorney in this state who obtains a conviction of, or a guilty or Alford plea from, an offender for violating KRS Chapter 218A shall, within seventy-two (72) hours after the conviction or the plea, notify the department ~~of Revenue~~ in writing if the offender has not paid the tax imposed by KRS 138.872 as evidenced by the absence of the tax stamps, labels, or other official tax indicia required to be affixed to the marijuana or controlled substance that was the subject of the conviction or plea. The weight or dosage units prescribed in this subsection shall include the weight of the marijuana or the weight or dosage units of the controlled substance, whether pure, impure, or diluted. The notice required in this subsection shall be submitted in the manner prescribed by the department of ~~Revenue~~ and shall include:
  - (a) The name, address, and Social Security number of the offender from whom the conviction or plea was obtained;
  - (b) The type and quantity of the items that were the subject of the conviction or plea;
  - (c) Any information developed during the course of the investigation regarding any real or personal properties owned by the offender from whom the conviction or plea was obtained; and
  - (d) Other information the Department of Revenue may require to facilitate the assessment and collection of the tax due pursuant to KRS 138.872.
- (2) To facilitate collection of the tax due pursuant to KRS 138.872, the Commonwealth's attorney or county attorney shall, as an authorized agent of the department ~~of Revenue~~, simultaneously file a copy of the notice required pursuant to subsection (1) of this section with:
  - (a) The county clerk of the county in which the conviction or the guilty or Alford plea was entered;
  - (b) The county clerk of the county in which the offender resides if different from the county in which the conviction or plea was entered;
  - (c) The county clerk of any other county in which the Commonwealth's attorney or county attorney reasonably believes the offender from whom the conviction or plea was obtained owns real or personal property; and
  - (d) Each financial institution or other custodian the Commonwealth's attorney or county attorney reasonably believes possesses any funds, safe deposit box, or other assets owned in whole or in part by the offender from whom the conviction or plea was obtained.
- (3) The notice required by subsection (2) of this section shall be a lien in favor of the Commonwealth pursuant to **Section 33 of this Act**~~[KRS 134.420]~~ to secure payment of the tax, penalty, and interest due. The tax shall be and remain a lien upon the property, and all property subsequently acquired, and may be enforced as other liens on similar property are enforced. The lien may be released only upon written notice from the department ~~of Revenue~~ that:
  - (a) The tax, penalty and interest due pursuant to KRS 138.872 and 138.889 have been paid;
  - (b) A bond has been given to the department ~~of Revenue~~ as provided in KRS 131.150; or
  - (c) The tax, penalty, and interest are determined by the department ~~of Revenue~~ not to be due.
- (4) The county clerk recording or releasing a state tax lien pursuant to this section shall be entitled to the fee prescribed therefor by KRS 64.012.
- (5) Except as necessary to accept taxes that the offender voluntarily pays under KRS 138.874, the department ~~of Revenue~~ shall not require a bond or otherwise attempt to collect the tax due under KRS 138.874 until the offender's taxable activity results in a conviction or a guilty or Alford plea for a violation of KRS Chapter 218A. However, the department ~~of Revenue~~ may impose a notice of lien on issuance of a warrant or indictment, which shall be released upon acquittal or dismissal of the case.
 

➔Section 53. KRS 15.460 is amended to read as follows:
- (1) Beginning July 15, 1998, an eligible local unit of government shall be entitled to receive annually a supplement of two thousand seven hundred fifty dollars (\$2,750) for each qualified police officer it employs, and beginning on July 1, 1999, an annual supplement of three thousand dollars (\$3,000) for each qualified police officer it employs, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan to which the officer belongs, but no more than the required employer's

contribution to the County Employees Retirement System hazardous duty category. In the case of County Employees Retirement System membership, the pension contribution on the supplement shall be paid whether the officer enters the system under hazardous duty coverage or nonhazardous coverage. The local unit of government shall pay the amount received for retirement coverage to the appropriate retirement system to cover the required employer contribution on the pay supplement. Should the foundation program funds be insufficient to pay employer contributions to the system, then the total amount available for pension payments shall be prorated to each eligible government so that each receives the same percentage of required pension costs attributable to the cash salary supplement.

- (2) Each qualified police officer, whose local government receives a supplement pursuant to subsection (1) of this section, shall be paid by the local government the supplement which his *or her* qualifications brought to the local government. The supplement paid each police officer shall be in addition to his *or her* regular salary.
- (3)
  - (a) Each qualified sheriff who receives the maximum salary allowed by Section 246 of the Kentucky Constitution and KRS 64.527 shall not receive a supplement.
  - (b) Each qualified sheriff who does not receive the maximum salary allowed by Section 246 of the Kentucky Constitution and KRS 64.527, excluding the expense allowance provided by KRS 70.170, shall upon ~~annual~~~~final~~ settlement with the fiscal court under *Section 22 of this Act*~~KRS 134.310~~, receive that portion of the supplement that will not cause his *or her* compensation to exceed the maximum salary.
  - (c) Each qualified sheriff who seeks to participate in the fund shall forward a copy of the ~~annual~~~~final~~ settlement prepared under *Section 22 of this Act*~~KRS 134.310~~ to the fund. The sheriff shall reimburse the fund if an audit of the ~~annual~~~~final~~ settlement conducted pursuant to *Section 22 of this Act*~~KRS 134.310~~ reflects that the sheriff received all or a portion of the supplement in violation of this section. A sheriff who fails to provide a copy of the ~~annual~~~~final~~ settlement to the fund or to reimburse the fund after correction by audit, if required, shall not be qualified to participate in the fund for a period of two (2) years.
  - (d) Each qualified deputy sheriff shall receive the supplement from the sheriff if the sheriff administers his *or her* own budget or from the county treasurer if the sheriff pools his *or her* fees. The failure of a sheriff to comply with the provisions of this section shall not affect the qualification of his *or her* deputies to participate in the fund.

➔Section 54. KRS 45.241 is amended to read as follows:

- (1) As used in this section:
  - (a) "Debt" means a sum certain which has been certified by an agency as due and owing;
  - (b) "Liquidated debt" means a legal debt for a sum certain which has been certified by an agency as final due and owing, all appeals and legal actions having been exhausted; and for the Court of Justice means a legal debt including any fine, fee, court costs, or restitution due the Commonwealth, which have been imposed by a final sentence of a trial court of the Commonwealth and for which the time permitted for payment pursuant to the provisions of KRS 23A.205(3) or ~~KRS~~ 24A.175(4) has expired;
  - (c) "Agency" means an organizational unit or administrative body in the executive branch of state government, as defined in KRS 12.010;
  - (d) "Department" means the Department of Revenue;
  - (e) "Court of Justice" means the Administrative Office of the Courts, all courts, and all clerks of the courts;
  - (f) "Forgivable loan agreement" means a loan agreement entered into between an agency and a borrower that establishes specific conditions, which, if satisfied by the borrower, allows the agency to forgive a portion or all of the loan; and
  - (g) "Improper payment" means a payment made to a vendor, provider, or recipient due to error, fraud, or abuse.
- (2) Each agency and the Court of Justice shall develop, maintain, and update in a timely manner an ongoing inventory of each debt owed to it, including debts due to improper payments, and shall make every reasonable effort to collect each debt. Within sixty (60) days after the identification of a debt, each agency shall begin administrative action to collect the debt.

- (3) The Auditor of Public Accounts shall review each agency's debt identification and collection procedures as part of the annual audit of state agencies.
- (4) An agency shall not forgive any debt owed to it unless that agency has entered into a forgivable loan agreement with a borrower, or unless otherwise provided by statute.
- (5) For those agencies without statutory procedures for collecting debts, the Department of Revenue shall promulgate administrative regulations in accordance with KRS Chapter 13A to prescribe standards and procedures with which those agencies shall comply regarding collection of debts, notices to persons owing debt, information to be monitored concerning the debts, and an appeals process.
- (6) Each agency and the Court of Justice shall identify all liquidated debts, including debts due to improper payments, and shall submit a list of those liquidated debts in the form and manner prescribed by the department to the department for review. The department shall review the information submitted by the agencies and the Court of Justice and shall, within ninety (90) days of receipt of the information, determine whether it would be cost-effective for the department to further pursue collection of the liquidated debts.
  - (a) The department may, after consultation with the agency or the Court of Justice, return the liquidated debt to the entity submitting the liquidated debt if:
    1. The request for review contains insufficient information; or
    2. The debt is not feasible to collect.Any return of a liquidated debt shall be in writing, and shall state why the debt is being returned.
  - (b) The department shall identify in writing, to the submitting agency or the Court of Justice, the liquidated debts it has determined that it can pursue in a cost-effective manner, and the agency or Court of Justice shall officially refer the identified liquidated debts to the cabinet for collection.
  - (c) The agency and the Court of Justice shall retain a complete record of all liquidated debts referred to the department for collection until the debt is collected or forgiven.
  - (d) Each agency and the Court of Justice shall make appropriate accounting of any uncollected debt as prescribed by law.
- (7)
  - (a) If the agency recovers the debt funds prior to referral to the department~~[of Revenue]~~, the agency shall retain the collected funds in accordance with its statutory authority.
  - (b)
    1. Upon referral of a liquidated debt to the department~~[of Revenue]~~, the liquidated debt shall accrue interest from the time of referral until paid, and a twenty-five percent (25%) collection fee shall attach unless the interest and collection fee are waived by the department~~[of Revenue]~~.
    2. The collection fee and interest shall be in addition to any other costs accrued prior to the time of referral.
    3. The department may deduct and retain from the liquidated debt recovered an amount equal to the lesser of the collection fee or the actual expenses incurred in the collection of the debt.
    4. Any funds recovered by the department~~[of Revenue]~~ after the deduction of the department's cost of collection expenses may, at the discretion of the secretary of the Finance and Administration Cabinet, be returned to the agency identifying the liquidated debt or to the Court of Justice for allocation as otherwise provided by law. If the recovered funds and interest are not returned to the agency or Court of Justice, the amounts shall be deposited in the general fund, except for Medicaid benefits funds and funds required by law to be remitted to a federal agency, which shall be remitted as required by law.
  - (c) Nothing in this section shall prohibit the department~~[of Revenue]~~ from entering into a memorandum of agreement with an agency pursuant to KRS 131.130(11), for collection of debts prior to liquidation. If an agency enters into an agreement with the department, the agency shall retain funds collected according to the provisions of the agreement.
  - (d) This section shall not affect any agreement between the department and an agency entered into under KRS 131.130(11) that is in effect on July 13, 2004, that provides for the collection of liquidated debts by the department on behalf of the agency.

- (e) This section shall not affect the collection of delinquent taxes by county attorneys under *Section 12 of this Act* ~~[KRS 134.500]~~.
- (f) This section shall not affect the collection of performance or reclamation bonds.
- (8) Upon receipt of a referred liquidated debt and after its determination that the debt is feasible and cost-effective to collect, the department ~~[of Revenue]~~ shall pursue collection of the referred debt in accordance with KRS 131.030.
- (9) By administrative regulation promulgated under KRS Chapter 13A, the department ~~[of Revenue]~~ shall prescribe the electronic format and form of, and the information required in, a referral.
- (10) (a) The department ~~[of Revenue]~~ shall report annually by October 1 to the Interim Joint Committee on Appropriations and Revenue on the collection of debts, including debts due to improper payments. The report shall include the total amount by agency and fund type of liquidated debt that has been referred to the department; the amount of each referring agency's liquidated debt, by fund type, that has been collected by the department; and the total amount of each referring agency's liquidated debt, by fund type, that the department determined to be cost-ineffective to collect, including the reasons for the determinations.
- (b) Each cabinet shall report annually by October 1 to the Interim Joint Committee on Appropriations and Revenue on:
  1. The amount of previous fiscal year unliquidated debt by agency, including debts due to improper payments, fund type, category, and age, the latter to be categorized as less than one (1) year, less than five (5) years, less than ten (10) years, and over ten (10) years; and
  2. The amount, by agency, of liquidated debt, including debts due to improper payments, not referred to the department ~~[of Revenue]~~; a summary, by criteria listed in subsection (6)(a) of this section, of reasons the department ~~[of Revenue]~~ provided for not requesting referral of those liquidated debts; and a summary of the actions each agency is taking to collect those liquidated debts.
- (c) Beginning on October 1, 2005, the Court of Justice shall report annually by October 1 of each year to the Interim Joint Committee on Appropriations and Revenue the amount of previous fiscal year unliquidated debt by county and whether in the Circuit Court or District Court; and fund type and age, the latter categorized as less than one (1) year, less than five (5) years, less than ten (10) years, and over ten (10) years. The first year for which the Court of Justice shall be required to report is the fiscal year beginning on July 1, 2004 and ending on June 30, 2005. The Court of Justice shall not be required to report unliquidated debts in existence prior to July 1, 2004.
- (d) The Finance and Administration Cabinet shall report annually by October 1 to the Interim Joint Committee on Appropriations and Revenue on the amount of the General Government Cabinet's unliquidated debt by agency, fund type, and age, the latter categorized as less than one (1) year, less than five (5) years, less than ten (10) years, and over ten (10) years.
- (11) At the time of submission of a liquidated debt to the department ~~[of Revenue]~~ for review, the referring agency or the Court of Justice shall provide information about the debt to the State Treasurer for the Treasurer's action under KRS 44.030(1).

➔Section 55. KRS 46.040 is amended to read as follows:

Except as provided in *Section 21 of this Act* ~~[KRS 134.320]~~, all county, district and other local officers authorized to collect money for the state shall, on the last day of each month, report to the Finance and Administration Cabinet and pay into the State Treasury all such funds on hand.

➔Section 56. KRS 64.012 is amended to read as follows:

The county clerk shall receive for the following services the following fees:

- (1) (a) Recording and indexing of a:
  1. Deed of trust or assignment for the benefit of creditors;
  2. Deed;
  3. Real estate mortgage;

4. Deed of assignment;
5. Real estate option;
6. Power of attorney;
7. Revocation of power of attorney;
8. Lease which is recordable by law;
9. Deed of release of a mortgage or lien under KRS 382.360;
10. United States lien;
11. Release of a United States lien;
12. Release of any recorded encumbrance other than state liens;
13. Lis pendens notice concerning proceedings in bankruptcy;
14. Lis pendens notice;
15. Mechanic's and artisan's lien under KRS Chapter 376;
16. Assumed name;
17. Notice of lien issued by the Internal Revenue Service;
18. Notice of lien discharge issued by the Internal Revenue Service;
19. Original, assignment, amendment, or continuation financing statement;
20. Making a record for the establishment of a city, recording the plan or plat thereof, and all other service incident;
21. Survey of a city, or any part thereof, or any addition to or extensions of the boundary of a city;
22. Recording with statutory authority for which no specific fee is set, except a military discharge; and
23. Filing with statutory authority for which no specific fee is set.

For all items in this subsection if the entire thereof does not exceed  
 three (3) pages ..... \$12.00  
 And, for all items in this subsection exceeding three (3) pages,  
 for each additional page ..... \$3.00  
 And, for all items in this subsection for each additional reference  
 relating to same instrument ..... \$4.00

- (b) The twelve dollar (\$12) fee imposed by paragraph (a) of this subsection shall be divided as follows:
  1. Six dollars (\$6) shall be retained by the county clerk; and
  2. Six dollars (\$6) shall be paid to the affordable housing trust fund established in KRS 198A.710 and shall be remitted by the county clerk within ten (10) days following the end of the quarter in which the fee was received. Each remittance to the affordable housing trust fund shall be accompanied by a summary report on a form prescribed by the Kentucky Housing Corporation.

- (2) Recording and indexing a file-stamped copy of documents pertaining to corporations authorized by KRS Chapter 271B., 272, 273, 274, 275, or 279 that have been filed first with the Secretary of State:

- (a) The entire record thereof does not exceed three (3) pages ..... \$10.00
- (b) And, exceeding three (3) pages, for each additional page ..... \$3.00

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| (3)  | Recording wills or other probate documents pursuant to KRS<br>Chapter 392 or 394 .....   | \$ 8.00  |
| (4)  | Recording court ordered name changes pursuant to KRS Chapter 401 .....   | \$ 8.00  |
| (5)  | For noting a security interest on a certificate of title pursuant to<br>KRS Chapter 186A .....   | \$12.00  |
| (6)  | For filing the release of collateral under a financing statement<br>and noting same upon the face of the title pursuant to KRS Chapter<br>186 or 186A .....  | \$5.00   |
| (7)  | Filing or recording state tax or other state liens .....   | \$5.00   |
| (8)  | Filing release of a state tax or other state lien .....  | \$5.00   |
| (9)  | Marginal release, noting release of any lien, mortgage, or redemption<br>other than a deed of release .....  | \$8.00   |
| (10) | Acknowledging or notarizing any deed, mortgage, power of attorney,<br>or other written instrument required by law for recording and certifying<br>same .....   | \$4.00   |
| (11) | Recording a land use restriction according to KRS 100.3681 .....   | \$15.00  |
| (12) | Recording plats, maps, and surveys, not exceeding 24 inches by<br>36 inches, per page .....  | \$20.00  |
| (13) | Recording a bond, for each bond .....  | \$10.00  |
| (14) | Each bond required to be taken or prepared by the clerk .....  | \$4.00   |
| (15) | Copy of any bond when ordered .....  | \$3.00   |
| (16) | Administering an oath and certificate thereof .....  | \$5.00   |
| (17) | Issuing a license for which no other fee is fixed by law .....   | \$8.00   |
| (18) | Issuing a solicitor's license .....  | \$15.00  |
| (19) | Marriage license, indexing, recording, and issuing certificate thereof .....   | \$24.00  |
| (20) | Every order concerning the establishment, changing, closing, or<br>discontinuing of roads, to be paid out of the county levy when<br>the road is established, changed, closed, or discontinued, and by<br>the applicant when it is not ..... | \$3.00   |
| (21) | Registration of licenses for professional persons required to register<br>with the county clerk .....  | \$10.00  |
| (22) | Certified copy of any record .....   | \$5.00   |
|      | Plus fifty cents (\$.50) per page after three (3) pages  |          |
| (23) | Filing certification required by KRS 65.070(1)(a) .....  | \$5.00   |
| (24) | Filing notification and declaration and petition of candidates<br>for Commonwealth's attorney .....  | \$200.00 |
| (25) | Filing notification and declaration and petition of candidates for<br>office in cities of the fifth or sixth class and candidates for county   |          |

- and independent boards of education ..... \$20.00
- (26) Filing notification and declaration and petition of candidates for  
boards of soil and water conservation districts ..... \$20.00
- (27) Filing notification and declaration and petition of candidates for  
other office \$50.00
- (28) Filing declaration of intent to be a write-in candidate for office  
other than municipal office in a city of the fifth or sixth class ..... \$50.00
- (29) Filing declaration of intent to be a write-in candidate for municipal  
office in a city of the fifth or sixth class ..... \$20.00
- (30) Filing petitions for elections, other than nominating petitions ..... \$50.00
- (31) Notarizing any signature, per signature ..... \$2.00
- (32) Filing bond for receiving bodies under KRS 311.310 ..... \$10.00
- (33) Noting the assignment of a certificate of delinquency *and recording*  
*and indexing the encumbrance* under *Section 8 or 9 of this Act*  
~~[KRS 134.480]~~ ..... ~~\$27.00~~~~[10.00]~~
- (34) Filing a going-out-of-business permit under KRS 365.445 ..... \$50.00
- (35) Filing a renewal of a going-out-of-business permit under KRS 365.445 ..... \$50.00
- (36) Filing a grain warehouseman's license under KRS 359.050 ..... \$10.00
- (37) Filing and processing a transient merchant permit under KRS 365.680 ..... \$25.00

➔Section 57. KRS 65.375 is amended to read as follows:

- (1) If any party obtains a judgment against a tax delinquent property within the county for the taxes and, to satisfy the judgment, the property is ordered sold at a tax sale pursuant to KRS 91.504~~[-134.190,]~~ or other provision of the Kentucky Revised Statutes, if no person bids an amount equal to the full amount of all tax bills, interest, and costs owing on the property at the sale, the authority shall be deemed to have bid the full amount of all tax bills, interest, and costs due to all parties of the authority regardless of whether or not they are all parties to the lawsuit. The authority shall not be required to make actual payment to the court for the amount deemed to have been bid. The court, notwithstanding any other provision of law, shall treat the amount deemed to have been bid as cash received. Upon proper motion by the authority, the court shall make a deed of the property to the "Land Bank Authority." The title to the property shall be an absolute estate in fee simple, free and clear of all tax bills, interests, and costs owing to the parties of the authority but shall be subject to rights of way of public utilities on which tax has otherwise been paid and subject to any right of redemption of the United States of America, if any.
- (2) When a property is acquired by the authority, all state, county, city, and school district taxes shall be extinguished.
- (3) At the time that the authority sells or otherwise disposes of property as part of its land bank program, the proceeds from the sale shall be distributed as follows:
  - (a) The party or parties bringing the action that resulted in the acquisition of the property by the land bank authority shall be reimbursed, to the extent proceeds are available, for all costs incurred; and
  - (b) Any remaining proceeds shall be distributed to the parties in proportion to their respective tax bills. Conveyance of a property to a party shall not constitute disposal.

➔Section 58. KRS 66.480 is amended to read as follows:

- (1) The governing body of a city, county, urban-county, charter county, school district (provided that its general procedure for action is approved by the Kentucky Board of Education), or other local governmental unit or political subdivision, may invest and reinvest money subject to its control and jurisdiction in:
- (a) Obligations of the United States and of its agencies and instrumentalities, including obligations subject to repurchase agreements, if delivery of these obligations subject to repurchase agreements is taken either directly or through an authorized custodian. These investments may be accomplished through repurchase agreements reached with sources including ~~but~~ but not limited to ~~the~~ national or state banks chartered in Kentucky;
  - (b) Obligations and contracts for future delivery or purchase of obligations backed by the full faith and credit of the United States or a United States government agency, including but not limited to:
    - 1. United States Treasury;
    - 2. Export-Import Bank of the United States;
    - 3. Farmers Home Administration;
    - 4. Government National Mortgage Corporation; and
    - 5. Merchant Marine bonds;
  - (c) Obligations of any corporation of the United States government, including but not limited to:
    - 1. Federal Home Loan Mortgage Corporation;
    - 2. Federal Farm Credit Banks;
    - 3. Bank for Cooperatives;
    - 4. Federal Intermediate Credit Banks;
    - 5. Federal Land Banks;
    - 6. Federal Home Loan Banks;
    - 7. Federal National Mortgage Association; and
    - 8. Tennessee Valley Authority;
  - (d) Certificates of deposit issued by or other interest-bearing accounts of any bank or savings and loan institution which are insured by the Federal Deposit Insurance Corporation or similar entity or which are collateralized, to the extent uninsured, by any obligations, including surety bonds, permitted by KRS 41.240(4);
  - (e) Uncollateralized certificates of deposit issued by any bank or savings and loan institution rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;
  - (f) Bankers' acceptances for banks rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;
  - (g) Commercial paper rated in the highest category by a nationally recognized rating agency;
  - (h) Bonds or certificates of indebtedness of this state and of its agencies and instrumentalities;
  - (i) Securities issued by a state or local government, or any instrumentality of agency thereof, in the United States, and rated in one (1) of the three (3) highest categories by a nationally recognized rating agency; and
  - (j) Shares of mutual funds, each of which shall have the following characteristics:
    - 1. The mutual fund shall be an open-end diversified investment company registered under the Federal Investment Company Act of 1940, as amended;
    - 2. The management company of the investment company shall have been in operation for at least five (5) years; and
    - 3. All of the securities in the mutual fund shall be eligible investments pursuant to this section.

- (2) The investment authority provided by subsection (1) of this section shall be subject to the following limitations:
- (a) The amount of money invested at any time by a local government or political subdivision in one (1) or more of the categories of investments authorized by **subsection**~~subsections~~ (1)(e), (f), (g), and (i) of this section shall not exceed twenty percent (20%) of the total amount of money invested by the local government; and
  - (b) No local government or political subdivision shall purchase any investment authorized by subsection (1) on a margin basis or through the use of any similar leveraging technique.
- (3) The governing body of every local government or political subdivision that invests or reinvests money subject to its control or jurisdiction according to the provisions of subsection (1) of this section shall by January 1, 1995, adopt a written investment policy that shall govern the investment of funds by the local government or political subdivision. The written investment policy shall include~~[-]~~ but shall not be limited to the following:
- (a) A designation of the officer or officers of the local government or political subdivision who are authorized to invest and oversee the investment of funds;
  - (b) A list of the permitted types of investments;
  - (c) Procedures designed to secure the local government's or political subdivision's financial interest in the investments;
  - (d) Standards for written agreements pursuant to which investments are to be made;
  - (e) Procedures for monitoring, control, deposit, and retention of investments and collateral;
  - (f) Standards for the diversification of investments, including diversification with respect to the types of investments and firms with whom the local government or political subdivision transacts business;
  - (g) Standards for the qualification of investment agents which transact business with the local government, such as criteria covering creditworthiness, experience, capitalization, size, and any other factors that make a firm capable and qualified to transact business with the local government or political subdivision; and
  - (h) Requirements for periodic reporting to the governing body on the status of invested funds.
- (4) Sheriffs, county clerks, and jailers, who for the purposes of this section shall be known as county officials, may~~[-, and at the direction of the fiscal court shall,]~~ invest and reinvest money subject to their control and jurisdiction, including tax dollars subject to the provisions of **KRS Chapter 134**~~[KRS 134.300, 134.320]~~, and 160.510, as permitted by this section.
- (5) The provisions of this section are not intended to impair the power of a county official, city, county, urban-county, charter county, school district, or other local governmental unit or political subdivision to hold funds in deposit accounts with banking institutions as otherwise authorized by law.
- (6) The governing body or county official may delegate the investment authority provided by this section to the treasurer or other financial officer or officers charged with custody of the funds of the local government, and the officer or officers shall thereafter assume full responsibility for all investment transactions until the delegation of authority terminates or is revoked.
- (7) All county officials shall report the earnings of any investments at the time of their annual reports and settlements with the fiscal courts for excess income of their offices.
- (8) The state local debt officer is authorized and directed to assist county officials and local governments, ~~[(except school districts,)]~~ in investing funds that are temporarily in excess of operating needs by:
- (a) Explaining investment opportunities to county officials and local governments through publication and other appropriate means; and
  - (b) Providing technical assistance in investment of idle funds to county officials and local governments that request that assistance.
- (9) (a) The state local debt officer may create an investment pool for local governments, ~~[(except school districts,)]~~ and county officials; and counties and county officials and cities may associate to create an

investment pool. If counties and county officials and cities create a pool, each group may select a manager to administer their pool and invest the assets. Each county and each county official and each city may invest in a pool created pursuant to this subsection. Investments shall be limited to those investment instruments permitted by this section. The funds of each local government and county official shall be properly accounted for, and earnings and charges shall be assigned to each participant in a uniform manner according to the amount invested. Charges to any local government or county official shall not exceed one percent (1%) annually on the principal amount invested, and charges on investments of less than a year's duration shall be prorated. Any investment pool created pursuant to this subsection shall be audited each year by an independent certified public accountant, or by the Auditor of Public Accounts. A copy of the audit report shall be provided to each local government or county official participating in the pool. In the case of an audit by an independent certified public accountant, a copy of the audit report shall be provided to the Auditor of Public Accounts, and to the state local debt officer. The Auditor of Public Accounts may review the report of the independent certified public accountant. After preliminary review, should discrepancies be found, the Auditor of Public Accounts may make his *or her* own investigative report or audit to verify the findings of the independent certified public accountant's report.

- (b) If the state local debt officer creates an investment pool, he *or she* shall establish an account in the Treasury for the pool. He *or she* shall also establish a separate trust and agency account for the purpose of covering management costs, and he *or she* shall deposit management charges in this account. The state local debt officer may *promulgate administrative*~~issue~~ regulations, pursuant to KRS Chapter 13A, governing the operation of the investment pool, including but not limited to provisions on minimum allowable investments and investment periods, and method and timing of investments, withdrawals, payment of earnings, and assignment of charges.
  - (c) Before investing in an investment pool created pursuant to this subsection, a local government or county official shall allow any savings and loan association or bank in the county, as described in subsection (1)(d) of this section, to bid for the deposits, but the local government or county official shall not be required to seek bids more often than once in each six (6) month period.
- (10) (a) With the approval of the Kentucky Board of Education, local boards of education, or any of them that desire to do so, may associate to create an investment pool. Each local school board which associates itself with other local school boards for the purpose of creating the investment pool may invest its funds in the pool so created and so managed. Investments shall be limited to those investment instruments permitted by this section. The funds of each local school board shall be properly accounted for, and earnings and charges shall be assigned to each participant in a uniform manner according to the amount invested. Charges to any local school board shall not exceed one percent (1%) annually on the principal amount invested, and charges on investments of less than a year's duration shall be prorated. Any investment pool created pursuant to this subsection shall be audited each year by an independent certified public accountant, or by the Auditor of Public Accounts. A copy of the audit report shall be provided to each local school board participating in the pool. In the case of an audit by an independent certified public accountant, a copy of the audit report shall be provided to the Auditor of Public Accounts, and to the Kentucky Board of Education. The Auditor of Public Accounts may review the report of the independent certified public accountant. After preliminary review, should discrepancies be found, the Auditor of Public Accounts may make his *or her* own investigative report or audit to verify the findings of the independent certified public accountant's report.
- (b) The Kentucky Board of Education may *promulgate*~~issue~~ administrative regulations governing the operation of the investment pool including~~[-]~~ but not limited to~~[-]~~ provisions on minimum allowable investments and investment periods, and methods and timing of investments, withdrawals, payment of earnings, and assignment of charges.

➔Section 59. KRS 70.020 is amended to read as follows:

- (1) The sheriff shall execute a bond for the faithful performance of the duties of his *or her* office. This bond shall be in addition to the bond required of him *or her* by *Section 24 of this Act*~~[KRS 134.230]~~ and shall be a minimum of ten thousand dollars (\$10,000), with sureties approved by the fiscal court, which shall enter the approval in its minutes and shall record the bond with the county clerk. The fiscal court shall require the sheriff to renew this bond annually, and more often if it deems proper.

- (2) No jailer, coroner, judge, county clerk, clerk of a Circuit Court, or attorney shall be surety for a sheriff on his official bond.

➔Section 60. KRS 67.938 is amended to read as follows:

- (1) The tax structure, tax rates, and level of services in effect in the county and in each of the participating cities upon the adoption of a unified local government shall remain in effect after the adoption of the unified local government and shall remain the same until changed by the newly elected unified local government legislative council.
- (2) In order to maintain the tax structure, tax rates, or level of services in the areas of the unified local government formerly comprising incorporated cities, the unified local government council may provide, in a manner described in this section, for taxes and services within the formerly incorporated cities that are different from the taxes and services which are applicable in the remainder of the unified local government. If a unified local government is formed that contains a participating city with a restaurant tax imposed pursuant to KRS 91A.400, the restaurant tax may be retained by the unified local government in the area of the participating city.
- (3) Any difference in the ad valorem tax rate on the class of property which includes the surface of the land in the portion of the county formerly comprising the incorporated cities, and the surface of the land in the portion of the county other than that formerly comprising the incorporated cities, may be imposed directly by the unified local government legislative council. Any change in these ad valorem tax rates shall comply with KRS 68.245, 132.010, 132.017, and 132.027 and shall be used for services as provided by KRS 82.085.
- (4) All delinquent taxes of a participating city in a unified local government shall be filed with the county clerk and shall be known as certificates of delinquency *or personal property certificates of delinquency* and shall be governed by the procedures set out in KRS Chapter 134, except that certificates of delinquency *and personal property certificates of delinquency* on former city tax bills ~~do not have to be advertised as set out in KRS 134.440 and~~ may be paid or purchased directly from the clerk under the provisions of *Sections 8 and 9 of this Act* ~~[KRS 134.480 without a sheriff's sale pursuant to KRS 134.450].~~

➔Section 61. KRS 67C.123 is amended to read as follows:

- (1) The tax structure, tax rates, and level of services in effect in the city of the first class and its county upon the adoption of a consolidated local government shall remain in effect after the adoption of the consolidated local government and shall remain the same until changed by the newly elected consolidated local government council.
- (2) All delinquent taxes of the former city of a first class in a consolidated local government shall be filed with the county clerk and shall be known as certificates of delinquency *or personal property certificates of delinquency* and shall be governed by the procedures set out in KRS Chapter 134, except that the ~~certificates~~ ~~[certificate]~~ of delinquency *and personal property certificates of delinquency* on tax bills of the former city of the first class ~~does not have to be advertised as set out in KRS 134.440 and~~ may be paid or purchased directly from the clerk under the provisions of *Sections 8 and 9 of this Act* ~~[KRS 134.480 without a sheriff's sale pursuant to KRS 134.450].~~
- (3) Notwithstanding the provisions of KRS 67C.115(2), all contracts, bonds, franchises, and other obligations of the city of the first class and of the county in existence on the effective date of a consolidated local government shall continue in force and effect as obligations of the consolidated local government and the consolidated local government shall succeed to all rights and entitlements thereunder. All conflicts in the provisions of the contracts, bonds, franchises, or other obligations shall be resolved in a manner that does not impair the rights of any parties thereto.

➔Section 62. KRS 92.810 is amended to read as follows:

In addition to those powers granted in this chapter for the collection of ad valorem taxes, any city of the second through the sixth class may enforce collection of any tax bill due it by the procedure authorized by the provisions of KRS 91.484 to 91.527, except the statute of limitations shall, in all cases, be that set forth in *Section 16 of this Act* ~~[KRS 134.420].~~

➔Section 63. KRS 149.580 is amended to read as follows:

- (1) The sheriff shall collect the assessment at the same time and in the same manner in which he *or she* collects the state and county ad valorem tax. He *or she* shall issue a receipt to the taxpayer, report to the county judge/executive, and make his *or her* annual and final settlements with the fiscal court at the same time and in the same manner provided by law for his *or her* report and settlement of county and state taxes.
- (2) Such assessments shall become due and payable on the date, and subject to the same discounts, delinquency date, and penalties provided in *Section 2 of this Act* ~~[KRS 134.020]~~ for state, county, and district taxes.

➔Section 64. KRS 160.500 is amended to read as follows:

- (1) School taxes shall be collected by the sheriff for county school districts and by the regular tax collector of the city or special tax collector for the independent school districts at the same time and in the same manner as other local taxes are collected, except as provided in this section and in KRS 160.510. The bond of the regular or special tax collector shall be made to cover ~~the~~ ~~his~~ duties as the tax collector of the school district or districts for which he *or she* collects taxes. The tax collector shall be entitled to a *commission* ~~[fee]~~ equal to *his or her expenses incurred in collecting the school taxes, provided that the commission shall* ~~[his expense but]~~ not be less than one and one-half percent (1.5%) *or more than* ~~[and not to exceed the rate of]~~ four percent (4%) *of the amount of school taxes collected, plus four percent (4%) of the amount of any interest earned on the amounts collected and invested by the tax collector prior to distribution to the school district* ~~[for the collection of school taxes, which fee may be charged only for collecting or receiving school taxes or school funds received from the local school levy]~~. No allowance shall be made for the collection of school taxes to any collecting officer who continues to collect taxes after ~~the~~ ~~his~~ term that would not be allowed him *or her* had he collected the taxes during his *or her* term.
- (2) An independent school district may select a special tax collector to collect its school taxes. ~~If an~~ ~~and in the event such~~ independent school district *selects* ~~[does so select]~~ a special tax collector, a majority of the members of the independent school district board of education shall fix a *commission* ~~[fee]~~ for ~~the~~ ~~such~~ special tax collector at a rate of not less than one and one-half percent (1.5%) and not more than four percent (4%) of the school taxes or school funds collected by ~~the~~ ~~such~~ special tax collector from the local school levy in such independent school district, *plus four percent (4%) of the amount of any interest earned on the amounts collected and invested by the tax collector prior to distribution to the school district*. The special tax collector shall be required to execute bond in the same manner as provided in KRS 160.560 for the execution of a treasurer's bond, and the penal sum of the bond shall not be less than the aggregate of the tax bills that come into the hands of the special tax collector.
- (3) The clerk shall include all school taxes on the regular tax bills furnished the tax collector ~~unless~~ ~~except in ease~~ an independent district has selected a special tax collector, in which case the school taxes shall be listed by the clerk on a separate bill. The clerk shall be allowed a fee not to exceed three cents (\$0.03) for each separate school tax bill, to be paid by the independent district board of education.
- (4) The county clerk shall be the ad valorem tax collector for motor vehicle taxes for county and independent school districts, and shall receive a commission of four percent (4%) of all such moneys collected for any school district, which commission shall be deducted monthly before payment to the depository of the district board of education.
- (5) ~~[For collections related to January 1, 1984 assessments other than motor vehicles, no county or independent school district shall fix a fee for the sheriff or special tax collector at a lesser percentage rate than was fixed in the prior year.~~
- ~~(6)~~ The General Assembly of Kentucky finds that commissions and fees set by the General Assembly for services performed in collecting ad valorem taxes by county clerks are the reasonable costs of collection by county clerks and their offices. The county clerk shall account for all funds collected to each taxing authority; however, in any accounting or settlement with district boards of education, the county clerk shall not be required to itemize any incremental costs in any accounting or settlement for ad valorem taxes collected.

➔Section 65. KRS 186.020 is amended to read as follows:

- (1) Before the owner of a motor vehicle, other than a motor vehicle engaged in the transportation of passengers for hire operating under a certificate of convenience and necessity, may operate it or permit its operation upon a highway, the owner shall apply for registration in accordance with administrative regulations promulgated by the cabinet, except that a person who purchases a motor vehicle, or brings a motor vehicle into the Commonwealth from another state shall make application for registration within fifteen (15) days. The bill of sale or assigned title must be in the motor vehicle during this fifteen (15) day period. If the owner of a motor

vehicle is an individual and resides in the Commonwealth, the motor vehicle shall be registered with the county clerk of the county in which he resides. If the owner of a motor vehicle does not reside in the Commonwealth, the motor vehicle shall be registered with the county clerk of the county in which the motor vehicle is principally operated. If the owner of a motor vehicle is other than an individual and resides in the Commonwealth, the motor vehicle shall be registered with the county clerk of either county. The application when presented to the county clerk for registration shall be accompanied by:

- (a) A bill of sale and a manufacturer's certificate of origin if the application is for the registration of a new motor vehicle;
  - (b) The owner's registration receipt, if the motor vehicle was last registered in this state;
  - (c) A bill of sale and the previous registration receipt, if last registered in another state where the law of that state does not require the owner of a motor vehicle to obtain a certificate of title or ownership;
  - (d) A certificate of title, if last registered in another state where the law of that state requires the owner of a motor vehicle to obtain a certificate of title or ownership;
  - (e) An affidavit from an officer of a local government saying that the motor vehicle has been abandoned and that the provisions of KRS 82.630 have been complied with, for local governments which elect to use the provisions of KRS 82.600 to 82.640; and
  - (f) The application from a person who has brought a motor vehicle into the Commonwealth from another state shall be accompanied by proof that the motor vehicle is insured in compliance with KRS 304.39-080.
- (2) After that, except as provided in subsection (6) of this section, the owner of any motor vehicle registered under KRS 186.050(1) or (2) shall register his motor vehicle on or before the date on which his certificate of registration expires. If, before operating the motor vehicle in this state, the owner registers it at some later date and pays the fee for the full year, he *or she* will be deemed to have complied with the law. Insofar as the owner is concerned, registration with the clerk shall be deemed to be registration with the cabinet.
  - (3) After that, the owner of any commercial vehicle registered under KRS 186.050(3) to (14) shall register ~~the~~<sup>his</sup> commercial vehicle on or before April 1 of each year. If, before operating a commercial vehicle in this state, the owner registers it at some later date and pays the required fee, he *or she* will be deemed to have complied with the law. Insofar as the owner is concerned, registration with the clerk shall be deemed to be registration with the cabinet, except the owner of any commercial motor vehicle to be registered pursuant to the International Registration Plan under KRS 186.050(13) shall register ~~the~~<sup>his</sup> commercial motor vehicles on or before the last day of the month of registration established pursuant to KRS 186.051(3).
  - (4) The application and documents presented therewith, including the sheriff's certificate of inspection, shall be affixed to the Transportation Cabinet copy of the certificate of title or registration and sent to the Transportation Cabinet by the clerk.
  - (5) At least forty-five (45) days prior to the expiration of registration of any motor vehicle previously registered in the Commonwealth as provided by KRS 186A.035, the owner of the vehicle shall be notified by mail on the same notice required by KRS 134.805(5) of the date of expiration. In addition, the department shall provide appropriate forms and information to permit renewal of motor vehicle registration to be completed by mail. Any registration renewal by mail shall require payment of an additional two dollar (\$2) fee which shall be received by the county clerk. Nonreceipt of the notice herein shall not constitute a defense to any registration related offense.
  - (6)
    - (a) If an individual has been serving in the United States military stationed or assigned to a base or other location outside the boundaries of the United States, he or she shall renew the registration on the vehicle within thirty (30) days of his or her return if:
      1. The motor vehicle has been stored on a military base during the time of deployment and has not been operated on the public highways during that time; and
      2. The vehicle's registration expired during the individual's absence.
    - (b) An individual who meets the criteria in paragraph (a) of this subsection shall not be convicted or cited for driving a vehicle with expired registration within thirty (30) days after the individual's return to the

Commonwealth if the individual can provide proof of meeting the eligibility criteria under paragraph (a) of this subsection.

- (c) When an individual presents evidence of meeting the criteria under paragraph (a) of this subsection when applying to renew the registration on the motor vehicle, the county clerk ~~[-~~
1. ~~Shall not charge the individual any penalties or interest or lien filing fees for delinquent ad valorem taxes that have accrued under KRS 134.148;~~
  2. ~~Shall remove, without charge, any lien for delinquent taxes filed under the provisions of KRS 134.148; and~~
  3. ~~shall, when applicable, treat the registration as a prorated renewal under KRS 186.051, and charge the individual a registration fee only for the number of months of the registration year the vehicle will be used on the public highways.~~

➔Section 66. KRS 281.602 is amended to read as follows:

The Department of Vehicle Regulation shall have the authority to file the notice of a lien with the county clerk prescribed in **Section 33 of this Act**~~{subsections (2) through (5) of KRS 134.420}~~, with respect to any license tax, excise tax, motor fuel tax, or other motor vehicular tax administered by the department.

➔Section 67. KRS 304.20-200 is amended to read as follows:

The interest of each person in the proceeds of any policy, except those on single-family dwellings, issued by an insurer, as defined in KRS 304.1-040, providing fire insurance coverage for loss or damages caused by fire on an item of real estate, provided the amount of the proceeds for the loss payable under such policy is ten thousand dollars (\$10,000) or more, shall be subject to any tax lien on such item of real estate continued in force pursuant to the provisions of **Sections 18 and 33 of this Act**~~{KRS 134.420}~~, and any such lien shall continue in force and apply equally to any fire insurance proceeds arising from a fire loss on such real estate. Any such lien may be discharged in the same manner as a lien filed pursuant to **Sections 18 and 33 of this Act**~~{KRS 134.420}~~.

➔Section 68. KRS 304.20-220 is amended to read as follows:

The liens existing pursuant to **Sections 18 and 33 of this Act**~~{KRS 134.420}~~ shall take precedence over any claim of right of an insured owner, mortgagee, assignee, or other interested party, except as otherwise provided by the laws of the United States.

➔Section 69. KRS 424.330 is amended to read as follows:

~~{(1) When the sheriff of any county files with the fiscal court a list of uncollectible delinquent taxes, in accordance with KRS 134.360, the fiscal court shall promptly cause a list, showing the name of and amount due from each delinquent taxpayer, to be advertised by newspaper publication. A fee of five dollars (\$5) per name per publication shall be added to the amount of each tax claim published as publication costs.~~

~~{(2) Cities may publish a list of uncollected delinquent taxes levied under Section 181 of the Kentucky Constitution, showing the name of and the amount due from each delinquent taxpayer, to be advertised by newspaper publication. A fee of five dollars (\$5) per name per publication may be added to the amount of each tax claim published as publication costs.~~

➔Section 70. KRS 134.480 is amended to read as follows:

- (1) (a) The delinquent taxpayer or any person owning or having a legal or equitable interest in real property covered by a certificate of delinquency may at any time pay the total amount of the certificate to any purchaser thereof, and any person whatsoever may likewise pay a certificate of delinquency when the claim is purchased by the sheriff on behalf of the state, county, or taxing district pursuant to KRS 134.450~~(3){(2)}~~.
- (b)
  1. When a certificate is paid to an owner other than the state, county, or taxing district, the assignee shall mark paid in full on the certified copy of the certificate and shall release the lien, or surrender the certified copy of the certificate of delinquency to the person making payment, and, if the person making payment is the person primarily liable on the certificate, the person may file it with the county clerk and have the certificate released of record.
  2. If the owner fails to release the lien within thirty (30) days, or surrender the certified copy of the certificate of delinquency to the person making payment within thirty (30) days after payment has

been tendered to the owner at the mailing address designated in the notice required by KRS 134.490(1)(b), the owner of the property subject to the certificate of delinquency shall have all of the remedies provided in KRS 382.365 against the owner of the certificate of delinquency.

- (c) When a certificate of delinquency has been fully paid to the state, county, and taxing districts, the clerk shall note the name and address of the person making the payment, the amount paid by the person, and such other information as the department may require. The clerk shall mark the certificate of delinquency paid in full. Payment in such instance by one other than the person primarily liable on the certificate will amount to an assignment of the certificate of delinquency. The payor shall be subrogated to the lien priority of the state, county, or taxing districts as provided in KRS 134.420(1), and the certificate of delinquency shall be collectible as provided in this subsection and subsection (2) of this section. The clerk shall note the assignment on the certificate of delinquency and provide the assignee a certified copy of the certificate of delinquency, or the clerk may provide for a certified electronic certificate of delinquency in the clerk's records in lieu of delivering a certified copy of the certificate of delinquency.
  - (d) Anyone other than the person primarily liable who pays a certificate or purchases it from an owner other than the state, county, and taxing district may, by paying a fee pursuant to KRS 64.012, have the clerk record the payment or purchase and such recordation shall constitute an assignment thereof. The assignment shall be recorded in the same manner as a notice of lis pendens. Failure to obtain such an assignment shall render the claim of such payor or purchaser to any real estate represented thereby inferior to rights of other bona fide purchasers, payors, or creditors. Any owner of a certificate of delinquency once having paid the assignment fee may have a change of his address noted of record by the clerk without paying an additional charge, otherwise the person shall pay a fee pursuant to KRS 64.012 to the clerk for entering such change on the certificate.
- (2)
    - (a) The county clerk may receive payment of the amount due on certificates of delinquency owned by the state, county, and taxing districts, and the clerk shall give a receipt to the payor and make a report to the department, the county treasurer, and the proper officials of the taxing districts as often as such units may require, and not less than once in every thirty (30) days.
    - (b) The clerk may accept payment of taxes due by any commercially acceptable means, including credit cards.
    - (c) The clerk shall pay to the department for deposit with the State Treasurer all moneys collected by the clerk due the state, to the county treasurer all moneys due the county, and to the authorized officers of the taxing districts the amount due each such district. The clerk shall pay the amount of fees, costs, commissions, and penalties to the persons, agencies, or parties entitled thereto.
    - (d) The clerk shall retain ten percent (10%) of the amount due each taxing unit as a fee for services provided. This fee shall be added to the amount of the tax claim and paid by the persons paying the tax claim.
  - (3)
    - (a) A person entitled to pay a certificate of delinquency who is having difficulty locating a private purchaser to make payment on a certificate of delinquency may send a registered letter addressed to the private purchaser who is the owner of record of the certificate. If the letter is returned by mail unclaimed, or if the private purchaser fails to respond within fifteen (15) days, the sender may provide proof that the letter was returned or that the private purchaser did not respond within fifteen (15) days to the county clerk, and may then make payment to the county clerk, who shall make the necessary assignment or release and deposit the money in an escrow account for this specific purpose in the nearest bank having its deposits insured with the Federal Deposit Insurance Corporation. The county clerk may maintain one (1) escrow account for all deposits made pursuant to this paragraph and shall maintain a record reflecting the amount due each private purchaser.
    - (b) The clerk may deduct the sum of twenty dollars (\$20) as a fee for such service. The name of the bank in which the money is deposited shall be noted on the certificate.
    - (c) The clerk shall mail a copy of the certificate by regular mail to the owner of record of the certificate at the address on the certificate.
  - (4) If any clerk fails to pay to the person entitled thereto, upon written demand, the money received in payment of a certificate of delinquency, the clerk and the clerk's sureties shall be liable for the same and twenty percent

(20%) interest thereon annually from the fifteenth day after the time the clerk received the written demand until paid.

- (5) Copies of the records provided for in KRS 134.450 and this section, certified by the county clerk, shall be evidence of the facts stated in them in all the courts of this state.

➔Section 71. The following KRS sections are repealed effective January 1, 2010:

- 134.020 Due date of taxes -- Discount -- Partial payment -- Delinquent taxes -- Penalty -- Revised collection schedule -- Collection efforts.
- 134.030 Extension by Governor of time for payment of taxes -- Relief of sheriff.
- 134.040 Effect of payment of taxes before due.
- 134.050 Tax is personal debt of person liable for payment -- Collection -- Penalties -- Personal checks.
- 134.060 Liability for tax as between holders of various interests in property.
- 134.070 Lien of joint owner paying entire tax.
- 134.080 Payment of tax by holder of lien or person in possession -- Rights on payment -- Lien.
- 134.090 Certificate of transfer issued to person paying tax for person liable -- Form -- Rights of transferee.
- 134.100 Recording of certificate of transfer -- Clerk's fee for record or release.
- 134.110 Duplicate certificate of transfer, where original is lost or destroyed.
- 134.120 Person for whom tax is paid is estopped from tax protest -- Reimbursement of transferee if certificate is invalid.
- 134.130 Release of property from certificate of transfer -- Redemption.
- 134.148 Clerk to file lien for taxes on motor vehicles or trailers -- Accounting by clerk of payments received.
- 134.150 Agents of Department of Revenue not to collect taxes without written authority from commissioner.
- 134.170 Payment of taxes to sheriff -- Receipts -- Deduction of taxes from claim due taxpayer -- Misapplication of funds.
- 134.180 Sheriff or deputy to visit justices' districts to receive tax payments.
- 134.200 Appointment of deputy sheriffs -- Bond -- Removal -- Retention of deputies' compensation by sheriff.
- 134.220 Death, resignation or removal of sheriff -- Sureties may nominate collector.
- 134.240 Form of general revenue bond of sheriff -- Filing and recording.
- 134.250 Special bond of sheriff for county levy -- Minimum -- Record.
- 134.260 Liability of sureties on sheriff's revenue bonds.
- 134.270 Limitation of action against sheriff and sureties.
- 134.280 Failure of sheriff to execute bond.
- 134.290 Compensation of sheriff for collecting state and county taxes.
- 134.295 Supplementation of sheriff's commission.
- 134.300 Reports, payments by sheriff.
- 134.310 Sheriff's annual settlement with county -- Objections -- Action in Circuit Court -- Statement of funds and expenditures -- Settlement for excess fees -- Applicability of KRS 64.368 if population decreases below 70,000.
- 134.320 Report and payment to Department of Revenue -- Penalty.
- 134.325 Sheriff's settlement for taxes collected.
- 134.330 Quietus and bond of sheriff -- Settlement on recertified tax bills.

- 134.340 Sheriff to record delinquent tax collections -- Penalty for failure to record or collect -- Prosecution by county attorney -- Compensation.
- 134.350 Apportionment of partial collection of tax.
- 134.360 Credit to sheriff for uncollectible delinquent taxes and certificates of delinquency.
- 134.385 Special audit by department.
- 134.390 Omitted tax bills, when due and when deemed delinquent -- Penalty -- Laws applicable to delinquency.
- 134.410 Investigation by commissioner of revenue of records of delinquent insurance companies.
- 134.430 Sale of personal property and delinquent tax claims against real property -- Compensation for services.
- 134.440 Advertisement of sale of tax claims -- Compensation of sheriff.
- 134.450 Sale of tax claims -- Offers of purchase -- Certificate of delinquency.
- 134.460 Evidence of validity of tax proceedings.
- 134.470 Liability of taxpayer on uncollectible tax bill or certificate of delinquency -- Action to enforce -- Operation of statute of limitations.
- 134.480 Who may pay certificates of delinquency -- Remedies for failure to release lien or surrender certified copy after payment -- Assignment -- Clerk to receive and record payments -- Records as evidence.
- 134.485 Apportionment of tax encumbrance where land is divided as to ownership and area.
- 134.500 Interest on certificates of delinquency -- Collection of amount due on certificate of delinquency and delinquent personal property tax bills -- Technical resources from department -- Installment payments.
- 134.540 Action to declare tax sale invalid and establish lien of state on sales made prior to June 12, 1940 -- County attorney to assist department -- Compensation.
- 134.550 Foreclosure of lien in action brought on sale made prior to June 12, 1940 -- Redemption before foreclosure.
- 134.560 Limitation of action to invalidate tax sale and establish lien, on sales made prior to June 12, 1940.
- 134.570 Effect of tax deed on sale made prior to June 12, 1940.

➔Section 72. Although the provisions of Sections 1 to 3 and 5 to 69 of this Act do not become effective until January 1, 2010, the Department of Revenue is authorized and directed to promulgate administrative regulations, develop forms, and take other necessary steps authorized by this Act prior to January 1, 2010, so that the provisions of this Act can effectively be implemented on January 1, 2010.

➔Section 73. The provisions of Sections 1 to 3 of this Act and 5 to 69 of this Act take effect January 1, 2010.

➔Section 74. Whereas the fiscal circumstances surrounding the sheriff's sale of delinquent tax claims necessitate an immediate change in the process, and because it is necessary for the Department of Revenue to promulgate administrative regulations and develop forms before the provisions of this Act can be implemented, an emergency is declared to exist and Sections 4, 70, and 72 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming law.

➔Section 75. To avoid confusion about the application of the provisions of this Act to the sale of 2009 tax bills it is explicitly stated that the provisions of Sections 1 to 3 and 5 to 69 of this Act shall apply to the purchase and sale of delinquent tax claims and certificates of delinquency related to assessments made in calendar year 2009.

**Signed by the Governor March 17, 2009.**

## CHAPTER 11

(SB 78)

AN ACT relating to reorganization.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 11.065 is amended to read as follows:

- (1) The secretaries of the Justice and Public Safety Cabinet, the Education *and Workforce Development* Cabinet, the Environmental and Public Protection Cabinet, the Transportation Cabinet, the Cabinet for Economic Development, the Cabinet for Health and Family Services, the Finance and Administration Cabinet, the Commerce Cabinet, the Personnel Cabinet, the Governor's Executive Cabinet, the state budget director, the Governor's chief of staff, and the Lieutenant Governor shall constitute the Governor's Executive Cabinet. There shall be a vice chairman appointed by the Governor who shall serve in an advisory capacity to the Executive Cabinet. The Governor shall be the chairman, and the secretary of the Finance and Administration Cabinet shall be a second vice chairman of the Executive Cabinet. The Governor may designate others to serve as vice chairman.
- (2) The cabinet shall meet not less than once every two (2) months and at other times on call of the Governor. The Executive Cabinet shall be a part of the Office of the Governor and shall not constitute a separate department or agency of the state. Members of the cabinet shall be the major assistants to the Governor in the administration of the state government and shall assist the Governor in the proper operation of his office and perform other duties the Governor may require of them.
- (3) The cabinet shall consider matters involving policies and procedures the Governor or any member may place before it. The cabinet shall advise and consult with the Governor on all matters affecting the welfare of the state.

➔Section 2. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
4. Department of Law.
  - (a) Attorney General.
5. Department of the Treasury.
  - (a) Treasurer.
6. Department of Agriculture.
  - (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
7. Auditor of Public Accounts.

II. Program cabinets headed by appointed officers:

1. Justice and Public Safety Cabinet:
  - (a) Department of Kentucky State Police.

- (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Office of Drug Control Policy.
  - (g) Office of Legal Services.
  - (h) Office of the Kentucky State Medical Examiner.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Office of Legislative and Intergovernmental Services.
  - (l) Office of Management and Administrative Services.
  - (m) Office of Public Safety Training.
  - (n) Office of Investigations.
  - (o) Department of Kentucky Vehicle Enforcement.
  - (p) Department for Public Advocacy.
2. Education *and Workforce Development* Cabinet:
- (a) Office of the Secretary.
  - (b) Office of Legal *and Legislative* Services.
    - 1. Client Assistance Program.
  - (c) Office of Communication.
  - ~~(d) Office of Legislative and Intergovernmental Affairs.~~
  - ~~(e)~~ Office of Budget and Administration.
    - 1. Division of Human Resources.
    - 2. Division of Administrative Services.
    - 3. Division of Technology Services.
  - (e) *Office of Educational Programs.*
  - (f) Board of Directors for the Center for School Safety.
  - (g) Council on Postsecondary Education.
    - 1. Foundation for Adult Education.
  - (h) Department of Education.
    - 1. Kentucky Board of Education.
  - (i) Department for Libraries and Archives.
  - (j) Department of Workforce Investment.
    - 1. Office for the Blind.
    - 2. Office of Vocational Rehabilitation.
    - 3. Office of Career and Technical Education.
    - 4. Office of Employment and Training.
  - (k) Foundation for Workforce Development.

- (l) Kentucky Office for the Blind State Rehabilitation Council.
  - (m) Kentucky Technical Education Personnel Board.
  - (n) Kentucky Workforce Investment Board.
  - (o) Statewide Council for Vocational Rehabilitation.
  - (p) Statewide Independent Living Council.
  - (q) Unemployment Insurance Commission.
  - (r) Education Professional Standards Board.
    - 1. Division of Educator Preparation.
    - 2. Division of Certification.
    - 3. Division of Professional Learning and Assessment.
    - 4. Division of Legal Services.
  - (s) Kentucky Commission on the Deaf and Hard of Hearing.
  - (t) Kentucky Educational Television.
  - (u) Kentucky Environmental Education Council.
3. Environmental and Public Protection Cabinet:
- (a) Office of the Secretary.
    - 1. Office of Legislative and Intergovernmental Affairs.
    - 2. Office of Communications and Public Outreach.
    - 3. Office of Regulatory Affairs.
    - 4. Office of Legal Services.
    - 5. Office of Administrative and Information Services.
    - 6. Office of Administrative Hearings.
    - 7. Office of Inspector General.
    - 8. Mine Safety Review Commission.
    - 9. Workers' Compensation Board.
    - 10. Kentucky State Nature Preserves Commission.
    - 11. Kentucky Environmental Quality Commission.
    - 12. Kentucky Occupational Safety and Health Review Commission.
  - (b) Department for Environmental Protection.
    - 1. Office of the Commissioner.
    - 2. Division of Air Quality.
    - 3. Division of Water.
    - 4. Division of Environmental Services.
    - 5. Division of Waste Management.
    - 6. Division of Enforcement.
    - 7. Division of Compliance Assistance.
  - (c) Department for Natural Resources.
    - 1. Office of the Commissioner.

2. Office of Technical and Administrative Support.
  3. Division of Mine Permits.
  4. Division of Mine Reclamation and Enforcement.
  5. Division of Abandoned Mine Lands.
  6. Division of Oil and Gas Conservation.
  7. Office of Mine Safety and Licensing.
  8. Division of Forestry.
  9. Division of Conservation.
- (d) Department of Public Protection.
1. Office of the Commissioner.
  2. Division of Administrative Services.
  3. Crime Victims Compensation Board.
  4. Board of Claims.
  5. Board of Tax Appeals.
  6. Kentucky Boxing and Wrestling Authority.
  7. Kentucky Horse Racing Authority.
  8. Kentucky Public Service Commission.
  9. Office of Alcoholic Beverage Control.
  10. Office of Charitable Gaming.
  11. Office of Financial Institutions.
  12. Office of Housing, Buildings and Construction.
  13. Office of Insurance.
- (e) Department of Labor.
1. Office of the Commissioner.
  2. Office of Occupational Safety and Health.
  3. Office of Labor Management Relations and Mediation.
  4. Office of Workplace Standards.
  5. Office of Workers' Claims.
  6. Workers' Compensation Funding Commission.
  7. Kentucky Labor Management Advisory Council.
  8. Occupational Safety and Health Standards Board.
  9. Prevailing Wage Review Board.
  10. Kentucky Employees Insurance Association.
  11. Apprenticeship and Training Council.
  12. State Labor Relations Board.
  13. Workers' Compensation Advisory Council.
  14. Workers' Compensation Nominating Commission.
  15. Employers' Mutual Insurance Authority.

16. Division of Administrative Services.
4. Transportation Cabinet:
    - (a) Department of Highways.
      1. Office of Program Planning and Management.
      2. Office of Project Development.
      3. Office of Construction and Operations.
      4. Office of Intermodal Programs.
      5. Highway District Offices One through Twelve.
    - (b) Department of Vehicle Regulation.
    - (c) Department of Administrative Services.
    - (d) Department of Aviation.
    - (e) Department of Intergovernmental Programs.
      1. Office of Transportation Enhancement Programs.
      2. Office of Rural and Secondary Roads.
    - (f) Office of the Secretary.
      1. Office of Legislative and Intergovernmental Affairs.
      2. Office of Public Affairs.
      3. Office of Transportation Delivery.
      4. Office for Business and Occupational Development.
      5. Office of Budget and Fiscal Management.
      6. Office of Legal Services.
      7. Office of Inspector General.
      8. Office of the Transportation Operations Center.
      9. Office of Personnel Management.
  5. Cabinet for Economic Development:
    - (a) Office of Administration and Support.
    - (b) Department for New Business Development.
    - (c) Department of Financial Incentives.
    - (d) Department for Existing Business Development.
    - (e) Tobacco Research Board.
    - (f) Kentucky Economic Development Finance Authority.
    - (g) Office of Research and Information Technology.
    - (h) Department of Commercialization and Innovation.
    - (i) Office of Legal Services.
    - (j) Commission on Small Business Advocacy.
  6. Cabinet for Health and Family Services:
    - (a) Department for Public Health.
    - (b) Department for Medicaid Services.

- (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission for Children with Special Health Care Needs.
  - (e) Office of Health Policy.
  - (f) Office of the Secretary.
  - (g) Office of Legal Services.
  - (h) Office of Inspector General.
  - (i) Office of Legislative and Public Affairs.
  - (j) Department for Community Based Services.
  - (k) Department for Disability Determination Services.
  - (l) Office of the Ombudsman.
  - (m) Department for Human Support Services.
  - (n) Kentucky Commission on Community Volunteerism and Service.
  - (o) Office of Fiscal Services.
  - (p) Office of Human Resource Management.
  - (q) Office of Technology.
  - (r) Office of Contract Oversight.
  - (s) Governor's Office of Wellness and Physical Activity.
  - (t) Department for Aging and Independent Living.
7. Finance and Administration Cabinet:
- (a) Office of General Counsel.
  - (b) Office of the Controller.
  - (c) Office of Administrative Services.
  - (d) Office of Public Information.
  - (e) Department for Facilities and Support Services.
  - (f) Department of Revenue.
  - (g) Commonwealth Office of Technology.
  - (h) State Property and Buildings Commission.
  - (i) Kentucky Savings Bond Authority.
  - (j) Office of Equal Employment Opportunity and Contract Compliance.
  - (k) Kentucky Employees Retirement Systems.
  - (l) Commonwealth Credit Union.
  - (m) State Investment Commission.
  - (n) Kentucky Housing Corporation.
  - (o) Kentucky Local Correctional Facilities Construction Authority.
  - (p) Kentucky Turnpike Authority.
  - (q) Historic Properties Advisory Commission.
  - (r) Kentucky Tobacco Settlement Trust Corporation.
  - (s) State Board for Proprietary Education.

- (t) Kentucky Higher Education Assistance Authority.
  - (u) Kentucky River Authority.
  - (v) Kentucky Teachers' Retirement System Board of Trustees.
8. Commerce Cabinet:
- (a) Department of Tourism.
    - (1) Division of Tourism Services.
    - (2) Division of Marketing and Advertising.
    - (3) Division of Parks Marketing.
  - (b) Kentucky Department of Parks.
    - (1) Division of Information Technology.
    - (2) Division of Personnel and Payroll.
    - (3) Division of Financial Operations.
    - (4) Division of Facilities Management.
    - (5) Division of Facilities Maintenance.
    - (6) Division of Customer Services.
    - (7) Division of Recreation.
    - (8) Division of Golf Courses.
    - (9) Division of Food Services.
    - (10) Division of Rangers.
    - (11) Division of Eastern Parks.
    - (12) Division of Southern Parks.
    - (13) Division of Western Parks.
  - (c) Department of Fish and Wildlife Resources.
    - (1) Division of Law Enforcement.
    - (2) Division of Administrative Services.
    - (3) Division of Engineering.
    - (4) Division of Fisheries.
    - (5) Division of Information and Education.
    - (6) Division of Wildlife.
    - (7) Division of Public Affairs.
  - (d) Kentucky Horse Park.
    - (1) Division of Support Services.
    - (2) Division of Buildings and Grounds.
    - (3) Division of Operational Services.
  - (e) Kentucky State Fair Board.
    - (1) Division of Expositions and Admission.
    - (2) Division of Kentucky Fair and Exposition Center Operations.
    - (3) Division of Commonwealth Convention Center.

- (4) Division of Public Relations and Media.
  - (5) Division of Administrative Services.
  - (6) Division of Personnel Management and Staff Development.
  - (7) Division of Sales.
  - (8) Division of Security and Traffic Control.
  - (f) Office of the Secretary.
  - (g) Office of Finance and Administration.
  - (h) Office of Legal Affairs.
  - (i) Office of Intergovernmental Affairs.
  - (j) Office of Human Resources.
  - (k) Office of Public Affairs and Constituent Services.
  - (l) Office of Information Technology.
  - (m) Office of the Kentucky Sports Authority.
    - (1) Kentucky Sports Authority Board.
  - (n) Office of Creative Services.
  - (o) Office of Capital Plaza Operations.
  - (p) Office of Arts and Cultural Heritage.
  - (q) Kentucky African-American Heritage Commission.
  - (r) Kentucky Foundation for the Arts.
  - (s) Kentucky Humanities Council.
  - (t) Kentucky Heritage Council.
  - (u) Kentucky Arts Council.
  - (v) Kentucky Historical Society.
    - (1) Division of Museums.
    - (2) Division of Oral History and Educational Outreach.
    - (3) Division of Research and Publications.
    - (4) Division of Administration.
  - (w) Kentucky Center for the Arts.
    - (1) Division of Governor's School for the Arts.
  - (x) Kentucky Artisans Center at Berea.
  - (y) Martin Luther King Commission.
  - (z) Northern Kentucky Convention Center.
  - (aa) Eastern Kentucky Exposition Center.
9. Personnel Cabinet:
- (a) Office of the Secretary.
  - (b) Department for Personnel Administration.
  - (c) Office for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.

- (e) Office of Administrative Services.
- (f) Office of Legal Services.
- (g) Office of Government Training.
- (h) Department for Employee Insurance.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Governor's Office for Local Development.
- 3. Kentucky Commission on Human Rights.
- 4. Kentucky Commission on Women.
- 5. Department of Veterans' Affairs.
- 6. Kentucky Commission on Military Affairs.
- 7. Office of Minority Empowerment.
- 8. Governor's Council on Wellness and Physical Activity.

➔Section 3. KRS 12.250 is amended to read as follows:

There are established within state government the following program cabinets:

- (1) Justice and Public Safety Cabinet.
- (2) Education *and Workforce Development* Cabinet.
- (3) Environmental and Public Protection Cabinet.
- (4) Transportation Cabinet.
- (5) Cabinet for Economic Development.
- (6) Cabinet for Health and Family Services.
- (7) Finance and Administration Cabinet.
- (8) Commerce Cabinet.
- (9) Personnel Cabinet.

➔Section 4. KRS 12.515 is amended to read as follows:

- (1) The following agencies shall designate a liaison to the Office for Faith-Based and Community Nonprofit Social Services:
  - (a) The Cabinet for Health and Family Services;
  - (b) The Department of Workforce Investment;
  - (c) The Education *and Workforce Development* Cabinet;
  - (d) The Department of Agriculture;
  - (e) The Kentucky Housing Corporation;
  - (f) The Environmental and Public Protection Cabinet; and
  - (g) The Economic Development Cabinet.
- (2) Each agency identified in subsection (1) of this section shall, in cooperation and coordination with the Office for Faith-Based and Community Nonprofit Social Services:
  - (a) Review and evaluate existing policies that affect government funding opportunities for faith-based and nonprofit community organizations and report to the office, within ninety (90) days of June 20, 2005, actions necessary to implement KRS 12.510; and

- (b) Amend existing policies and administrative regulations or implement new policies or administrative regulations in accordance with KRS Chapter 13A consistent with the principles established in KRS 12.500 to 12.520.

➔Section 5. KRS 12.550 is amended to read as follows:

- (1) The Governor's Council on Wellness and Physical Activity is hereby established and authorized to operate the Governor's Wellness and Physical Activity Program, Inc. for the purpose of establishing and implementing a health, wellness, and fitness program for Kentucky and to promote a healthy lifestyle for all citizens of the Commonwealth. The Governor's Council on Wellness and Physical Activity shall be attached to the Office of the Governor for administrative purposes.
  - (a) The ex officio members of the Governor's Council on Wellness and Physical Activity shall be as follows:
    - 1. The Governor or the Governor's designee from the executive cabinet;
    - 2. The secretary of the Cabinet for Health and Family Services or designee;
    - 3. The secretary of the Personnel Cabinet or designee;
    - 4. The secretary of the Education *and Workforce Development* Cabinet;
    - 5. The Senate co-chair of the Interim Joint Committee on Health and Welfare of the General Assembly; and
    - 6. The House co-chair of the Interim Joint Committee on Health and Welfare of the General Assembly.
  - (b) In addition to the ex officio members, the Governor shall appoint five (5) council members to serve three (3) year terms on the Governor's Council on Wellness and Physical Activity. Members appointed by the Governor may be reappointed by the Governor to serve successive terms. In making appointments, the Governor shall attempt to include individuals from different geographic regions of the Commonwealth of Kentucky. The Governor shall make appointments to fill vacancies as they occur. Each appointment after the initial appointment shall be for a three (3) year term unless the appointment is to fill the unexpired portion of a term.
  - (c) The Governor or, if so designated by the Governor, the chairman of the council shall have the authority to hire, fire, and manage all personnel of the Governor's Wellness and Physical Activity Program, Inc., including the executive director.
  - (d) The council shall administer funds appropriated or gifts, donations, or funds received from any source. The council may expend funds in its discretion to carry out the intent of KRS 12.020, 12.023, 12.550, 194A.030 and 194A.085.
  - (e) The council shall closely coordinate with the Governor's Office of Wellness and Physical Activity to establish policies and procedures.
  - (f) The council shall select from its membership a chairman and any other officers it considers essential. The council may have committees and subcommittees as determined by the council.
  - (g) The council shall develop funding and support plans that provide for the maintenance of the Governor's Office of Wellness and Physical Activity, and shall make recommendations to the Governor and secretary of the Cabinet for Health and Family Services.
  - (h) The council shall meet quarterly or more often as necessary for the conduct of its business. A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at committee meetings.
  - (i) Members of the council shall serve without compensation but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the council, subject to Finance and Administration Cabinet administrative regulations.
  - (j) The council may establish working groups as necessary.

- (k) The council shall establish the Governor's Wellness and Physical Activity Program, Inc. pursuant to the requirements in KRS 12.020, 12.023, 12.550, 194A.030, and 194A.085.
- (2) Funds appropriated for purposes of the program shall only be used to facilitate the goals of the Governor's Office of Wellness and Physical Activity and shall not lapse at the end of the fiscal year.
- (3) (a) The Governor's Wellness and Physical Activity Program, Inc. shall follow standard accounting practices and shall submit the following financial reports to the Office of the Governor, the Finance and Administration Cabinet, and the Legislative Research Commission:
  - 1. Quarterly reports of expenditures of state funds, submitted on or before the thirtieth day after the end of each quarter in the corporation's fiscal year;
  - 2. Annual reports of receipts and expenditures for the Governor's Wellness and Physical Activity Program, Inc., submitted on or before the sixtieth day after the end of the fiscal year of the corporation; and
  - 3. The report of an annual financial audit conducted by an independent auditor, submitted on or before September 1 of each year.
- (b) The Governor's Wellness and Physical Activity Program, Inc. and the Governor's Office of Wellness and Physical Activity shall file quarterly reports with the Office of the Governor and the Legislative Research Commission. The report shall include a detail of the operations of the program for the preceding year. The report shall include information concerning the participant demographics, number of incentives distributed, and program outcomes according to such measures of success as the board may adopt.

➔Section 6. KRS 13B.020 is amended to read as follows:

- (1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other provisions are duplicative or in conflict. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.
- (2) The provisions of this chapter shall not apply to:
  - (a) Investigations, hearings to determine probable cause, or any other type of information gathering or fact finding activities;
  - (b) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;
  - (c) Any other public hearing conducted by an administrative agency which is nonadjudicatory in nature and the primary purpose of which is to seek public input on public policy making;
  - (d) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;
  - (e) Administrative hearings conducted by the legislative and judicial branches of state government;
  - (f) Administrative hearings conducted by any city, county, urban-county, charter county, or special district contained in KRS Chapters 65 to 109, or any other unit of local government operating strictly in a local jurisdictional capacity;
  - (g) Informal hearings which are part of a multilevel hearing process that affords an administrative hearing at some point in the hearing process if the procedures for informal hearings are approved and promulgated in accordance with subsections (4) and (5) of this section;
  - (h) Limited exemptions granted for specific hearing provisions and denoted by reference in the text of the applicable statutes or administrative regulations;
  - (i) Administrative hearings exempted pursuant to subsection (3) of this section;
  - (j) Administrative hearings exempted, in whole or in part, pursuant to subsections (4) and (5) of this section; and
  - (k) Any administrative hearing which was commenced but not completed prior to July 15, 1996.

- (3) The following administrative hearings are exempt from application of this chapter in compliance with 1994 Ky. Acts ch. 382, sec. 19:
- (a) Finance and Administration Cabinet
    - 1. Higher Education Assistance Authority
      - a. Wage garnishment hearings conducted under authority of 20 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410
      - b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A and sec. 3716, and 34 C.F.R. sec. 30.33
    - 2. Department of Revenue
      - a. Any licensing and bond revocation hearings conducted under the authority of KRS 138.210 to 138.448 and 234.310 to 234.440
      - b. Any license revocation hearings under KRS 131.630 and 138.130 to 138.205
  - (b) Cabinet for Health and Family Services
    - 1. Office of Health Policy
      - a. Certificate-of-need hearings and licensure conducted under authority of KRS Chapter 216B
      - b. Licensure revocation hearings conducted under authority of KRS Chapter 216B
    - 2. Department for Community Based Services
      - a. Supervised placement revocation hearings conducted under authority of KRS Chapter 630
    - 3. Department for Disability Determination Services
      - a. Disability determination hearings conducted under authority of 20 C.F.R. sec. 404
  - (c) Justice and Public Safety Cabinet
    - 1. Department of Kentucky State Police
      - a. Kentucky State Police Trial Board disciplinary hearings conducted under authority of KRS Chapter 16
    - 2. Department of Corrections
      - a. Parole Board hearings conducted under authority of KRS Chapter 439
      - b. Prison adjustment committee hearings conducted under authority of KRS Chapter 197
      - c. Prison grievance committee hearings conducted under authority of KRS Chapters 196 and 197
    - 3. Department of Juvenile Justice
      - a. Supervised placement revocation hearings conducted under KRS Chapter 635
  - (d) Environmental and Public Protection Cabinet
    - 1. Department for Natural Resources
      - a. Surface mining hearings conducted under authority of KRS Chapter 350
    - 2. Department for Environmental Protection
      - a. Wild River hearings conducted under authority of KRS Chapter 146
      - b. Water resources hearings conducted under authority of KRS Chapter 151
      - c. Water plant operator and water well driller hearings conducted under authority of KRS Chapter 223

- d. Environmental protection hearings conducted under authority of KRS Chapter 224
- e. Petroleum Storage Tank Environmental Assurance Fund hearings under authority of KRS Chapter 224
- 3. Office of Workers' Claims
  - a. Workers' compensation hearings conducted under authority of KRS Chapter 342
- 4. Kentucky Occupational Safety and Health Review Commission
  - a. Occupational safety and health hearings conducted under authority of KRS Chapter 338
- 5. Department of Public Protection
  - a. Board of Claims
    - i. Liability hearings conducted under authority of KRS Chapter 44
  - b. Public Service Commission
    - i. Utility hearings conducted under authority of KRS Chapters 74, 278, and 279
- (e) Education *and Workforce Development* Cabinet
  - 1. Unemployment Insurance hearings conducted under authority of KRS Chapter 341
- (f) Secretary of State
  - 1. Registry of Election Finance
    - a. Campaign finance hearings conducted under authority of KRS Chapter 121
- (g) State universities and colleges
  - 1. Student suspension and expulsion hearings conducted under authority of KRS Chapter 164
  - 2. University presidents and faculty removal hearings conducted under authority of KRS Chapter 164
  - 3. Campus residency hearings conducted under authority of KRS Chapter 164
  - 4. Family Education Rights to Privacy Act hearings conducted under authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99
  - 5. Federal Health Care Quality Improvement Act of 1986 hearings conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS Chapter 311.
- (4) Any administrative hearing, or portion thereof, may be certified as exempt by the Attorney General based on the following criteria:
  - (a) The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;
  - (b) Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings; or
  - (c) The hearing procedures represent informal proceedings which are the preliminary stages or the review stages of a multilevel hearing process, if the provisions of this chapter or the provisions of a substantially equivalent hearing procedure exempted under subsection (3) of this section are applied at some level within the multilevel process.
- (5) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures by administrative regulation which, insofar as practical, shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in the Franklin Circuit Court within thirty (30) days

of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.

- (6) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.

➔Section 7. KRS 15A.342 is amended to read as follows:

The Office of Drug Control Policy shall be responsible for all matters relating to the research, coordination, and execution of drug control policy and for the management of state and federal grants, including but not limited to the prevention and treatment related to substance abuse. By December 31 of each year, the Office of Drug Control Policy shall review, approve, and coordinate all current projects of any substance abuse program which is conducted by or receives funding through agencies of the executive branch. This oversight shall extend to all substance abuse programs which are principally related to the prevention or treatment, or otherwise targeted at the reduction, of substance abuse in the Commonwealth. The Office of Drug Control Policy shall promulgate administrative regulations consistent with enforcing this oversight authority. In addition, the Office of Drug Control Policy and KY-ASAP shall:

- (1) Develop a strategic plan to reduce the prevalence of smoking and drug and alcohol abuse among both the youth and adult populations in Kentucky;
- (2) Monitor the data and issues related to youth alcohol and tobacco access, smoking cessation and prevention, and substance abuse policies, their impact on state and local programs, and their flexibility to adapt to the needs of local communities and service providers;
- (3) Make policy recommendations to be followed to the extent permitted by budgetary restrictions and federal law, by executive branch agencies that work with smoking cessation and prevention and alcohol and substance abuse issues to ensure the greatest efficiency in agencies and to ensure that a consistency in philosophy will be applied to all efforts undertaken by the administration in initiatives related to smoking cessation and prevention and alcohol and substance abuse;
- (4) Identify existing resources in each community that advocate or implement programs for smoking cessation or prevention, or drug and alcohol abuse prevention, education, or treatment;
- (5) Encourage coordination among public and private, state and local, agencies, organizations, and service providers, and monitor related programs;
- (6) Act as the referral source of information, utilizing existing information clearinghouse resources within the Department for Public Health and CHAMPIONS for a Drug Free Kentucky Office, relating to youth tobacco access, smoking cessation and prevention, and substance abuse prevention, cessation, and treatment programs. The Office of Drug Control Policy and KY-ASAP shall identify gaps in information referral sources;
- (7) Search for grant opportunities for existing programs within the Commonwealth;
- (8) Make recommendations to state and local agencies and local tobacco addiction and substance abuse advisory and coordination boards;
- (9) Observe programs from other states;
- (10) Coordinate services among local and state agencies, including but not limited to the Justice and Public Safety Cabinet, the Cabinet for Health and Family Services, the Department of Agriculture, the Environmental and Public Protection Cabinet, the Administrative Office of the Courts, and the Education *and Workforce Development* Cabinet;
- (11) Assure the availability of training, technical assistance, and consultation to local service providers for programs funded by the Commonwealth that provide services related to tobacco addiction, smoking cessation or prevention, or alcohol or substance abuse;
- (12) Review existing research on programs related to smoking cessation and prevention and substance abuse prevention and treatment;
- (13) Comply with any federal mandate regarding smoking cessation and prevention and substance abuse, to the extent authorized by state statute;

- (14) Establish a mechanism to coordinate the distribution of funds to support any local prevention, treatment, and education program based on the strategic plan developed in subsection (1) of this section that could encourage smoking cessation and prevention through efficient, effective, and research-based strategies;
- (15) Oversee a school-based initiative that links schools with community-based agencies and health departments to implement School Programs to Prevent Tobacco Use, based upon the model recommended by the Centers for Disease Control and Prevention. To the extent permitted by resources, the initiative shall involve input by and services from each of the family resource and youth services centers, regional prevention centers, and existing school-based antidrug programs;
- (16) Work with community-based organizations to encourage them to work together to establish comprehensive tobacco addiction and substance abuse prevention education programs and carry out the strategic plan developed in this section. These organizations shall be encouraged to partner with district and local health departments and community mental health centers to plan and implement interventions to reach youths before tobacco addiction and substance abuse become a problem in their lives;
- (17) Coordinate media campaigns designed to demonstrate the negative impact of smoking and the increased risk of tobacco addiction, substance abuse, and the development of other disease in children, young people, and adults. To accomplish this objective, KY-ASAP shall work with local media to reach all segments of the community quickly and efficiently;
- (18) Certify to the Governor, the secretary of the Justice and Public Safety Cabinet, and the General Assembly during the budget request process established under KRS Chapter 48 the extent to which each entity receiving state funds has cooperated with the Office of Drug Control Policy and KY-ASAP, coordinated with community resources, and vigorously pursued the philosophy of the Office of Drug Control Policy and KY-ASAP;
- (19) Promulgate, with the approval of the secretary of the Justice and Public Safety Cabinet, any administrative regulations necessary to implement this section and KRS 15A.340 and 15A.344; and
- (20) Report annually to the Legislative Research Commission and Governor regarding the proper organization of state government agencies that will provide the greatest coordination of services, and report semiannually to the Legislative Research Commission and Governor on the status of the Office of Drug Control Policy and KY-ASAP programs, services, and grants, and on other matters as requested by the Legislative Research Commission and Governor.

➔Section 8. KRS 42.4592 is amended to read as follows:

- (1) Moneys remaining in the local government economic development fund following the transfer of moneys to the local government economic assistance fund provided for in KRS 42.4585 and following the transfer of moneys to the secondary wood products development fund provided for in KRS 42.4586 shall be allocated as follows:
  - (a) Thirty-three and one-third percent (33-1/3%) shall be allocated to each coal producing county on the basis of the ratio of total tax collected in the current and preceding four (4) years on coal severed in each respective county to the total tax collected statewide in the current and four (4) preceding years.
  - (b) Thirty-three and one-third percent (33-1/3%) shall be allocated quarterly to each coal-producing county on the basis of the following factors, which shall be computed for the current and four (4) preceding years, and which shall be equally weighted:
    1. Percentage of employment in mining in relation to total employment in the respective county;
    2. Percentage of earnings from mining in relation to total earnings in the respective county; and
    3. Surplus labor rate.
  - (c) Thirty-three and one-third percent (33-1/3%) shall be reserved for expenditure for industrial development projects benefiting two (2) or more coal-producing counties. For purposes of this paragraph, "coal-producing county" shall mean a county which has produced coal in the current or any one of the four (4) preceding years.
- (2) (a) For purposes of paragraph (b) of subsection (1) of this section, "percentage of employment in mining" and "percentage of earnings from mining" shall be the percentages published for the latest available five (5) year period by the Bureau of Economic Analysis in the United States Department of Commerce; "surplus labor rate" shall be the rate published for the latest available five (5) year period by the Office

of Employment and Training *of the Department of Workforce Investment* in the Education *and Workforce Development* Cabinet, as provided in paragraph (b) of this subsection.

- (b) 1. Each year the Office of Employment and Training shall estimate surplus labor for each county and for the Commonwealth and shall annually publish an estimate of the surplus labor rate for each county and the Commonwealth.
  - 2. The estimate of surplus labor for each county and for the Commonwealth shall be made using the best practical method available at the time the estimates are made. In determining the method to be adopted, the Office of Employment and Training may consult with knowledgeable individuals, including but not limited to the Office of the United States Bureau of Labor Statistics, state and national researchers, state and local officials, and staff of the Legislative Research Commission. The description of the method used to estimate surplus labor shall be reported in each annual publication provided for in subparagraph 1. of this paragraph.
  - 3. For purposes of this section, "surplus labor" means the total number of residents who can be classified as unemployed or as discouraged workers, and "surplus labor rate" means the percentage of the potential civilian labor force which is surplus labor.
- (3) The funds allocated under the provisions of paragraphs (a) and (b) of subsection (1) of this section shall retain their identity with respect to the county to which they are attributable, and a separate accounting of available moneys within the fund shall be maintained for the respective counties. Accounting for funds allocated under the provisions of this section shall be by the Governor's Office for Local Development.

➔Section 9. KRS 45.001 is amended to read as follows:

- (1) The Capital Development Committee is created. The committee shall ensure the proper coordination of state government initiatives which impact the City of Frankfort and Franklin County government and are unique to the seat of state government.
- (2) The committee shall meet at least semiannually at a time and place announced by the chairperson.
- (3) The membership of the committee shall consist of the following members or their designees:
  - (a) The mayor of the city of Frankfort;
  - (b) The county judge/executive of Franklin County;
  - (c) The secretary of the Finance and Administration Cabinet;
  - (d) The secretary of the Commerce Cabinet;
  - (e) The secretary of the Education *and Workforce Development* Cabinet;
  - (f) The commissioner of the Department of Tourism;
  - (g) The executive director of the Office of Capital Plaza Operations;
  - (h) The chairman of the Frankfort/Franklin County Tourist and Convention Commission;
  - (i) A citizen at large, who is a resident of Franklin County, appointed by the Franklin County judge/executive; and
  - (j) A citizen at large, who is a resident of Frankfort, appointed by the mayor of the city of Frankfort.

The citizen-at-large members of the committee shall be appointed to a term of four (4) years each.

- (4) The Governor shall appoint the chairperson of the committee.
- (5) Members of the committee shall serve without compensation.
- (6) The Office of Capital Plaza Operations shall provide administrative support to the committee.

➔Section 10. KRS 45A.470 is amended to read as follows:

- (1) All governmental bodies and political subdivisions of this state shall, when purchasing commodities or services, give first preference to the products made by the Department of Corrections, Division of Prison Industries, as required by KRS 197.210. Second preference shall be given to the Kentucky industries for the

blind as described in KRS 163.450 to 163.470 through June 30, 2000, and thereafter to any products produced by Kentucky Industries for the Blind, Incorporated or any other nonprofit corporation with which the Office for the Blind contracts under KRS 163.480(2) to further the purposes of KRS Chapter 163 and agencies of individuals with severe disabilities as described in KRS 45A.465.

- (2) The Finance and Administration Cabinet shall make a list of commodities and services provided by these agencies and organizations available to all governmental bodies and political subdivisions. The list shall identify in detail the commodity or service the agency or organization may supply and the price.
- (3) The Finance and Administration Cabinet shall annually determine the current price range for the commodities and services offered from its experience in purchasing these commodities or services on the open market. The prices quoted by these agencies or organizations shall not exceed the current price range.
- (4) The Office for the Blind within the Education *and Workforce Development* Cabinet and qualified agencies for individuals with severe disabilities shall annually cause to be made available to the Finance and Administration Cabinet, lists of the products or services available.
- (5) If two (2) or more of the agencies or qualified nonprofit organizations wish to supply identical commodities or services, the Finance and Administration Cabinet shall conduct negotiations with the parties to determine which shall be awarded the contract. The decision of the Finance and Administration Cabinet shall be based upon quality of the commodity or service and the ability of the respective agencies to supply the commodity or service within the requested delivery time.

➔Section 11. KRS 141.065 is amended to read as follows:

- (1) For the purposes of this section, "code" or "Internal Revenue Code" means the Internal Revenue Code in effect as of December 31, 1981.
- (2) There shall be allowed as a credit for any taxpayer against the tax imposed by KRS 141.020 or 141.040 and 141.0401 for any taxable year, with the ordering of the credits as provided in KRS 141.0205, an amount equal to one hundred dollars (\$100) for each person hired by the taxpayer, if that person has been classified as unemployed by the Office of Employment and Training of the Department of Workforce Investment in the Education *and Workforce Development* Cabinet and has been so classified for at least sixty (60) days prior to his employment by the taxpayer, and if further that person has remained in the employ of the taxpayer for at least one hundred eighty (180) consecutive days during the taxable year in which the taxpayer claims the credit.
- (3) No credit shall be allowed to any taxpayer for any person hired under any of the following circumstances:
  - (a) A person for whom the taxpayer receives federally funded payments for on-the-job training;
  - (b) For any person who bears any of the relationships to the taxpayer described in paragraphs (1) through (8) of Section 152(a) of the Internal Revenue Code, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than fifty percent (50%) in value of the outstanding stock of the corporation as determined with the application of Section 267(c) of the code;
  - (c) If the taxpayer is an estate or trust, to any person who is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in paragraphs (1) through (8) of Section 152(a) of the code to a grantor, beneficiary, or fiduciary of the estate or trust; or
  - (d) To any person who is a dependent of the taxpayer as described in code Section 152(a)(9), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.
- (4) For purposes of this section, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In no instance shall the credit, if any, allowable by subsection (2) of this section for any employee qualified thereunder be claimed more than once for any taxable year by such a controlled group of corporations. For purposes of this subsection, the term "controlled group of corporations" has the meaning given to that term by code Section 1563(a), except that "more than fifty percent (50%)" shall be substituted for "at least eighty percent (80%)" each place it appears in code Section 1563(a)(1), and the determination shall be made without regard to subsections (a)(4) and (e)(3)(c) of code Section 1563.
- (5) For purposes of this section, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and in no instance shall the credit, if

any, allowable by subsection (2) of this section for any employee qualified thereunder be claimed more than once for any taxable year.

- (6) No credit shall be allowed under subsection (2) of this section to any organization which is exempt from income tax by this chapter.
- (7) In the case of a pass-through entity, the amount of the credit determined under this section for any taxable year shall be applied at the entity level against the limited liability entity tax imposed by KRS 141.0401 and shall also be apportioned pro rata among the members, partners, or shareholders of the limited liability entity on the last day of the taxable year, and any person to whom an amount is so apportioned shall be allowed, subject to code Section 53, a credit under subsection (2) of this section for that amount.
- (8) In the case of an estate or trust, the amount of the credit determined under this section for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of income of the estate or trust allocable to each, and any beneficiary to whom any amount has been apportioned under this subsection shall be allowed, subject to code Section 53, a credit under subsection (2) of this section for that amount.
- (9) In no event shall the credit allowed, pursuant to this section, for any taxable year exceed the tax liability of the taxpayer for the taxable year.

➔Section 12. KRS 148.562 is amended to read as follows:

- (1) The authority shall be governed by a board of directors consisting of thirteen (13) members as follows:
  - (a) Secretary of the Commerce Cabinet, or his or her designee;
  - (b) Secretary of the Transportation Cabinet, or his or her designee;
  - (c) Secretary of the Education *and Workforce Development* Cabinet, or his or her designee;
  - (d) Secretary of the Finance and Administration Cabinet, or his or her designee;
  - (e) Three (3) members appointed by the Governor, one (1) to be a representative of the Kentucky Arts Council, and two (2) to be at-large members; and
  - (f) Six (6) members appointed by the mayor of the city of Berea to include two (2) representatives of Berea city government, two (2) representatives of Berea College recommended by the president of Berea College, one (1) representative of Eastern Kentucky University recommended by the president of Eastern Kentucky University, and one (1) at-large member.
- (2) Members shall serve for staggered terms of four (4) years beginning August 1, 2000, except that of the initial appointments:
  - (a) One (1) appointment by the Governor and two (2) appointments by the mayor of the city of Berea shall each serve a term of four (4) years;
  - (b) Two (2) appointments by the mayor of the city of Berea and one (1) appointment by the Governor shall each serve a term of three (3) years;
  - (c) One (1) appointment by the Governor and one (1) appointment by the mayor of the city of Berea shall each serve a term of two (2) years; and
  - (d) One (1) appointment by the mayor of the city of Berea shall serve a term of one (1) year.
- (3) The Governor shall appoint a chair from among the members of the board.
- (4) A quorum of the board shall consist of seven (7) members, with a majority of members present authorized to act upon any matter legally before the authority.
- (5) A member may be removed by the appointing authority only for neglect of duty, misfeasance, or malfeasance, and after being afforded an opportunity for a hearing in accordance with KRS Chapter 13B, relating to administrative hearings.

➔Section 13. KRS 151B.020 is amended to read as follows:

- (1) The Education *and Workforce Development* Cabinet is hereby created, which shall constitute a cabinet of the state government within the meaning of KRS Chapter 12. The cabinet shall consist of a secretary and those administrative bodies and employees as provided by law.
- (2) The cabinet, subject to the provisions of KRS Chapter 12, shall be composed of the major organizational units listed below, units listed in KRS 12.020, and other departments, divisions, and sections as are from time to time deemed necessary for the proper and efficient operation of the cabinet:
  - (a) The Department of Workforce Investment, which is hereby created and established within the Education *and Workforce Development* Cabinet. The department shall be directed and managed by a commissioner who shall be appointed by the Governor under the provisions of KRS 12.040, and who shall report to the secretary of the Education *and Workforce Development* Cabinet. The department shall be composed of the following offices:
    1. The Office of Career and Technical Education, which is created by KRS 151B.025;
    2. The Office of Vocational Rehabilitation, which is created by KRS 151B.185;
    3. The Office for the Blind established by KRS 163.470; and
    4. The Office of Employment and Training, which is created by KRS 151B.280;
  - (b) The Kentucky Technical Education Personnel Board established in KRS 151B.097; and
  - (c) The Unemployment Insurance Commission established by KRS 341.110.
- (3) The executive officer of the cabinet shall be the secretary of the Education *and Workforce Development* Cabinet. The secretary shall be appointed by the Governor pursuant to KRS 12.255 and shall serve at the pleasure of the Governor. The secretary shall have general supervision and direction over all activities and functions of the cabinet and its employees and shall be responsible for carrying out the programs and policies of the cabinet. The secretary shall be the chief executive officer of the cabinet and shall have authority to enter into contracts, subject to the approval of the secretary of the Finance and Administration Cabinet, when the contracts are deemed necessary to implement and carry out the programs of the cabinet. The secretary shall have the authority to require coordination and nonduplication of services provided under the Federal Workforce Investment Act of 1998, 20 U.S.C. secs. 9201 et seq. The secretary shall have the authority to mandate fiscal responsibility dispute resolution procedures among state organizational units for services provided under the Federal Workforce Investment Act of 1998, 20 U.S.C. secs. 9201 et seq.
- (4) The secretary of the Education *and Workforce Development* Cabinet and the secretary's designated representatives, in the discharge of the duties of the secretary, may administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and production of books, papers, correspondence, memoranda, and other records considered necessary and relevant as evidence at hearings held in connection with the administration of the cabinet.
- (5) The secretary of the Education *and Workforce Development* Cabinet may delegate any duties of the secretary's office to employees of the cabinet as he or she deems necessary and appropriate, unless otherwise prohibited by statute.
- (6) The secretary of the Education *and Workforce Development* Cabinet shall promulgate, administer, and enforce administrative regulations that are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds, and that are necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs except for programs and federal funds within the authority of the Council on Postsecondary Education, the Department of Education, the Kentucky Board of Education, and the Education Professional Standards Board.

➔Section 14. KRS 151B.025 is amended to read as follows:

- (1) The Office of Career and Technical Education is hereby created within the Education *and Workforce Development* Cabinet. The office shall consist of an executive director and those administrative bodies and employees provided by or appointed pursuant to law.
- (2) The chief executive officer of the office shall be the executive director of the Office of Career and Technical Education. The executive director shall be appointed to the unclassified service by the secretary of the Education *and Workforce Development* Cabinet with the approval of the Governor pursuant to KRS 12.050. The executive director shall have general supervision and direction over all functions of the office and its

employees, and shall be responsible for carrying out the programs and policies of the office. The executive director may delegate authority to deputies who may then act on his or her behalf in performing the duties assigned in this subsection.

- (3) The office shall have the responsibility for all administrative functions of the state in relation to the management, control, and operation of state-operated secondary area vocational education and technology centers. When appropriate, the office shall provide education training programs through contracts with private business and industries. These programs may be on a shared cost basis or on a total cost recovery basis.
- (4) The executive director of the Office of Career and Technical Education shall have the authority to enter into agreements or contracts with other government or education agencies, including local school districts, in order to carry out services under the office's jurisdiction.
- (5) Secondary area vocational education and technology centers shall be operated in compliance with program standards established by the Kentucky Board of Education. Principals, counselors, and teaching staff shall meet the qualifications and certification standards for all secondary vocational personnel as established by the Educational Professional Standards Board. In addition to direct appropriations, funds appropriated to support the cost of operating area vocational education and technology centers shall be transferred annually from the secondary funds administered by the Kentucky Department of Education for that purpose.
- (6) The Office of Career and Technical Education, in the operation and management of its schools and the programs at those schools, shall meet all required federal and state standards relating to facilities and personnel qualification; provided, however, that no license or license fee shall be required for any school or program operated by the Office of Career and Technical Education.
- (7)
  - (a) The Office of Career and Technical Education shall be the education agency solely designated for the purpose of developing and approving state plans required by state or federal laws and regulations as prerequisites to receiving federal funds for vocational-technical or technology education. The office shall involve representatives from all eligible recipient categories in the development of the required plans.
  - (b) In accordance with 20 U.S.C. sec. 2302(9), the Kentucky Workforce Investment Board is hereby designated to be the "eligible agency" that is the sole state agency responsible for the administration of vocational and technical education and the supervision of the administration of vocational and technical education.
- (8) Except for the duties that the Workforce Investment Board must retain pursuant to 20 U.S.C. sec. 2341, the Kentucky Workforce Investment Board shall be authorized to delegate all of the other duties and responsibilities of the eligible agency to the Office of Career and Technical Education within the Education *and Workforce Development* Cabinet, including but not limited to the administration, operation, and supervision of the Perkins program and the authority to receive, hold, and disburse funds awarded under the state plan.
- (9) The office shall be permitted to enter into memorandums of agreement with individuals on a year-to-year basis to fill positions in hard-to-find teaching specialties. The agreements and compensation for hard-to-find teaching specialties shall be approved by the executive director and shall not be subject to the provisions of KRS Chapter 45A. All agreements shall be filed with the secretary of the Finance and Administration Cabinet.
- (10) The executive director of the Office of Career and Technical Education shall, from time to time, prepare or cause to be prepared any bulletins, programs, outlines of courses, placards, and courses of study deemed useful in the promotion of the interests of technical and vocational education.
- (11) The executive director of the Office of Career and Technical Education shall be responsible for the preparation of a biennial budget request, which shall be forwarded to the executive director of the Office of Budget and Administration within the Education *and Workforce Development* Cabinet for preliminary review and approval. Final approval shall be given by the secretary of the Education *and Workforce Development* Cabinet or his or her designee.

➔Section 15. KRS 151B.030 is amended to read as follows:

The Office of Career and Technical Education shall have the following organizational structure:

- (1) The secretary of the Education *and Workforce Development* Cabinet shall appoint an executive director of career and technical education pursuant to KRS 12.050 and assign duties as appropriate;
- (2) There is hereby created a Division of Secondary Education and Technical Training within the Office of Career and Technical Education. The division shall be headed by a director appointed by the secretary of the Education *and Workforce Development* Cabinet under KRS 12.050. The division shall be composed of organizational entities as deemed appropriate by the secretary of the Education *and Workforce Development* Cabinet;
- (3) The appointing authority shall appoint an ombudsman pursuant to KRS 12.050 and specify his or her functions and duties; and
- (4) The Kentucky Technical Education Personnel Board, pursuant to KRS 151B.097, shall be attached to the Office of Career and Technical Education for administrative purposes.

➔Section 16. KRS 151B.045 is amended to read as follows:

- (1) The records of the Office of Career and Technical Education shall be public records and shall be open to public inspection, as provided in KRS 61.870 to 61.884.
- (2)
  - (a) A personnel file shall be maintained by the Education *and Workforce Development* Cabinet for each employee. The files maintained by the Education *and Workforce Development* Cabinet shall be the official personnel file for the employees.
  - (b) Each file shall include but not be limited to the employee's name, address, title of positions held, classifications, rates of compensation, all changes in status including evaluations, promotions, demotions, layoffs, transfers, disciplinary actions, commendations, and awards. Each file shall contain the complete record and supporting documentation for each personnel action.
  - (c) When an employee is reprimanded for misconduct, other infraction, or failure to perform duties in a proper or adequate manner, the supervising employee taking the action shall document the action in detail, and shall provide the employee with a copy of the documentation. The supervising employee shall inform the employee of his or her right to prepare a written response to the action taken after the employee has reviewed the written documentation prepared by the supervising employee. The employee's response shall be attached to the documentation prepared by the supervising employee. The supervising employee shall place a copy of the documentation and response in the employee's personnel file and shall transmit a copy to be placed in the central office personnel file of the employee. The supervising employee shall notify the employee that copies of the documentation and the response provided for in this subsection have been placed in the employee's personnel files.
- (3) Upon written request, an employee shall have the right to examine his or her personnel file. An employee may comment in writing on any item in the file. The comments shall be made a part of the file and shall be attached to the specific record or document to which they pertain.
- (4) No public agency, as defined by KRS 61.870, and no officer or employee shall deny, abridge, or impede the exercise of the rights granted in any manner by this section and by KRS 61.878.

➔Section 17. KRS 151B.097 is amended to read as follows:

- (1) The Kentucky Technical Education Personnel Board is hereby established to conduct personnel appeals from certified and equivalent employees in the Office of Career and Technical Education under KRS Chapter 151B. Appeals shall be conducted in accordance with the provisions established in KRS Chapter 13B. The board shall be attached to the Office of Career and Technical Education for administrative purposes.
- (2) The Kentucky Technical Education Personnel Board shall be composed of five (5) voting members, three (3) of whom shall be selected from employees of agencies within the Education *and Workforce Development* Cabinet, except no member shall be an employee within the Office of the Secretary or the Office of Career and Technical Education. The remaining two (2) members shall be teachers employed by the Office of Career and Technical Education's Area Technology Centers. The election of the teacher representatives may be conducted by written ballot, Internet balloting, intranet balloting, or electronic mail. The teacher candidates may be present when the balloting is tallied. All votes cast shall be tallied by an independent entity.
  - (a) The Governor shall appoint the two (2) members elected by the teachers employed by the Office of Career and Technical Education's Area Technology Centers and the three (3) members selected from employees of agencies within the Education *and Workforce Development* Cabinet. All members shall

be appointed by the Governor to four (4) year terms, and each term shall end on June 30 of the fourth year. Terms of new members or reappointed members shall begin on July 1 of the year beginning their term. If a vacancy occurs during a term, the Governor shall appoint a replacement to serve the remainder of the unexpired term within thirty (30) days of the vacancy. The Governor shall select a replacement from the group where the vacancy occurred. The manner of selection for the replacement shall be the same as the manner of the original selection.

- (b) The members shall possess an understanding of the personnel system established in KRS Chapter 151B.
  - (c) A chair shall be elected annually by members of the board.
- (3) The board shall meet as necessary to comply with time frames for conducting personnel appeals under KRS Chapter 13B and KRS Chapter 151B, and at other times as deemed necessary by the chair of the board. For meetings of the board, a majority of the voting members shall be present to constitute a quorum for the transaction of business.
  - (4) The Office of Career and Technical Education shall provide administrative, budgetary and support staff services for the board.
  - (5) Employees of the Education *and Workforce Development* Cabinet who serve as members of the board shall not receive additional salary for serving as members on the board. However, upon approval of the executive director of the Office of Career and Technical Education, board members shall be entitled to reimbursement of actual and necessary expenses incurred while performing their duties as an active member of the board.
  - (6) During personnel appeals conducted by the board, both parties shall be given the opportunity to have a representative present at each step of the process.

➔Section 18. KRS 151B.120 is amended to read as follows:

- (1) The vice president of the Kentucky Adult Education Program in the Council on Postsecondary Education and the executive director of the Office of Career and Technical Education may enter into agreements to train workers for new manufacturing jobs in new or expanding industries characterized by one (1) or more of the following criteria: a high average skill, a high average wage, rapid national growth, or jobs feasible and desirable for location in rural regions. Such agreements shall be subject to review and approval by the secretary of the Education *and Workforce Development* Cabinet and shall not be subject to the requirements of KRS 45A.045 and KRS 45A.690 to 45A.725 when awarded on the basis of a detailed training plan approved by the appropriate agency head. Reimbursement to the industry shall be made upon submission of documents validating actual training expenditure not to exceed the amount approved by the training plan.
- (2) The vice president and the executive director may approve authorization for his or her agency to enter into agreements with industries whereby the industry may be reimbursed directly for the following services:
  - (a) The cost of instructors' salaries when the instructor is an employee of the industry to be served;
  - (b) Cost of only those supplies, materials, and equipment used exclusively in the training program; and
  - (c) Cost of leasing a training facility should a vocational education school or the industrial plant not be available.

➔Section 19. KRS 151B.130 is amended to read as follows:

- (1) There is hereby established a nonprofit foundation to be known as the "Foundation for Adult Education." The purpose of the foundation shall be to supplement public funding for adult training in order to expand existing basic skills training programs.
- (2) Funding for the foundation shall be obtained through contributions by the private sector. The foundation shall be empowered to solicit and accept funds from the private sector to be used for grants to local education agencies to fund adult basic education programs especially designed for business and industry. Contributors may specify that contributed funds be used to improve the educational level of their employees as it relates to the GED instruction program.
- (3) The foundation shall be governed by a board of trustees to be appointed by the secretary of the Education *and Workforce Development* Cabinet with responsibility for adult education programs based on recommendations

from business, industry, labor, education, and interested citizens. Staff for the board of trustees shall be provided by the cabinet.

- (4) The foundation shall be attached to the office of the president of the Council on Postsecondary Education for administrative purposes.

➔Section 20. KRS 151B.155 is amended to read as follows:

The State Treasurer is custodian of all money received by the state from the federal government under the federal acts accepted by KRS 151B.145, and the State Treasurer shall collect the money and pay it out upon the order of the secretary of the Education *and Workforce Development* Cabinet.

➔Section 21. KRS 151B.185 is amended to read as follows:

- (1) The Office of Vocational Rehabilitation is hereby created within the Education *and Workforce Development* Cabinet, Department of Workforce Investment. The office shall consist of an executive director and those administrative bodies and employees provided or appointed pursuant to law. The office shall be composed of the Division of Program Services and the Division of the Carl D. Perkins Vocational Training Center. Each division shall be headed by a director appointed by the secretary of the Education *and Workforce Development* Cabinet under the provisions of KRS 12.050, and shall be composed of organizational entities as deemed appropriate by the secretary of the Education *and Workforce Development* Cabinet.
- (2) The Office of Vocational Rehabilitation shall have such powers and duties as contained in KRS 151B.180 to 151B.210 and such other functions as may be established by administrative regulation.
- (3) The office shall be the sole state agency for the purpose of developing and approving state plans required by state or federal laws and regulations as prerequisites to receiving federal funds for vocational rehabilitation.
- (4) The chief executive officer of the office shall be the executive director of the Office of Vocational Rehabilitation. The executive director shall be appointed by the secretary of the Education *and Workforce Development* Cabinet under the provisions of KRS 12.050. The executive director shall have experience in vocational rehabilitation and supervision and shall have general supervision and direction over all functions of the office and its employees, and shall be responsible for carrying out the programs and policies of the office.
- (5) Except as otherwise provided, the office shall be the state agency responsible for all rehabilitation services and for other services as deemed necessary. The office shall be the agency authorized to expend all state and federal funds designated for rehabilitation services. The Office of the Secretary of the Education *and Workforce Development* Cabinet is authorized as the state agency to receive all state and federal funds and gifts and bequests for the benefit of rehabilitation services.
- (6) Employees under the jurisdiction of the Office of Vocational Rehabilitation who are members of a state retirement system as of June 30, 1990, shall remain in their respective retirement systems.

➔Section 22. KRS 151B.225 is amended to read as follows:

- (1) There is hereby created a Client Assistance Program which is assigned for administrative purposes to the Office of Legal *and Legislative* Services within the Education *and Workforce Development* Cabinet.
- (2) The Client Assistance Program shall pursue legal, administrative, and other appropriate remedies to ensure the protection of rights of individuals with disabilities who are receiving treatment, services, or rehabilitation under the Rehabilitation Act of 1973, as amended. If additional resources are required to perform the duties and responsibilities of the Client Assistance Program, the cabinet, on behalf of the Client Assistance Program, may contract with other state agencies to obtain necessary legal or other professional services.
- (3) The Office of Legal *and Legislative* Services shall serve as the agency in charge of all personnel, equipment, records, files, and funds pertaining to the Client Assistance Program as provided for in the Rehabilitation Act of 1973, as amended.

➔Section 23. KRS 151B.230 is amended to read as follows:

- (1) There is hereby established a nonprofit foundation to be known as the "Foundation for Workforce Development." The purpose of the foundation shall be to supplement public funding for technical education programs in order to expand existing skills training programs.
- (2) Funding for the foundation shall be obtained through contributions by the private sector. The foundation shall be empowered to solicit and accept funds from the private sector to be used to fund technical education

programs especially designed for business and industry. Contributors may specify that contributed funds be used to improve the technical skill level of their employees.

- (3) The foundation shall be governed by a board of trustees to be appointed by the secretary of the Education *and Workforce Development* Cabinet based on recommendations from business, industry, labor, education, and interested citizens. Staff assistance for the board of trustees shall be provided by the Office of Career and Technical Education.
- (4) The foundation shall be attached to the Education *and Workforce Development* Cabinet for administrative purposes.
- (5) The foundation shall report its finances consistent with statutes and regulations promulgated by the Finance and Administration Cabinet. An annual report shall be made to the Interim Joint Committee on Appropriations and Revenue. This report shall follow generally accepted accounting procedures and shall include a detail reporting on all moneys acquired and expended.

➔Section 24. KRS 151B.250 is amended to read as follows:

- (1) It is the intent of the General Assembly to create and support a School-to-Careers System that involves business, labor, education, and government to prepare students for careers in an ever-changing economy.
- (2) The Office of Career and Technical Education within the Education *and Workforce Development* Cabinet shall coordinate the School-to-Work effort with the Kentucky Department of Education. As the School-to-Work effort is a federally supported program that fits within the overall mission of the School-to-Careers System, it is critical that collaboration and coordination occur. The following elements shall be coordinated when possible:
  - (a) Planning and partner involvement of business, labor, education, government, community-based organizations, employers, parents, and students;
  - (b) Career awareness, exploration, preparation, and guidance incorporated in the school curriculum;
  - (c) A comprehensive system approach from the primary through postsecondary levels with all students having the opportunity to participate;
  - (d) Applied learning experiences;
  - (e) Integration of academic and occupational education;
  - (f) Performance assessment;
  - (g) Actual or simulated learning at the school or the worksite;
  - (h) Curriculum based on skill standards representing all aspects of an industry;
  - (i) Secondary to postsecondary articulation;
  - (j) Postsecondary articulation; and
  - (k) Professional development opportunities for all partners.
- (3) The Office of Career and Technical Education may promulgate administrative regulations establishing policy for the development and implementation of a school-to-work transition system.
- (4) The Office of Career and Technical Education shall comply with the provisions of the federal School-to-Work Opportunities Act, Pub.L. 103-239 as it is amended from time to time.

➔Section 25. KRS 151B.280 is amended to read as follows:

- (1) The Office of Employment and Training is created and established within the Department of Workforce Investment within the Education *and Workforce Development* Cabinet. The Office of Employment and Training shall develop and operate employment development and placement programs, including job recruitment and business liaison functions, employability development and training programs, and job counseling and placement programs of the cabinet. In addition, the office shall develop and operate all programs relating to the unemployment insurance laws of the Commonwealth, including responsibilities relating to hearing and judging unemployment insurance benefit appeals.

- (2) The Office of Employment and Training shall be headed by an executive director appointed by the secretary with the approval of the Governor, in accordance with KRS 12.050. The executive director for employment and training shall be a person who, by experience and training in administration and management, is qualified to perform the duties of the office. The executive director for employment and training shall exercise authority over the Office of Employment and Training under the direction of the commissioner of the Department of Workforce Investment, and shall fulfill only the responsibilities delegated by the commissioner.
- (3) (a) The secretary of the Education *and Workforce Development* Cabinet shall develop and promulgate administrative regulations which protect the confidential nature of all records and reports of the Office of Employment and Training which directly or indirectly identify a client or former client and which insure that these records are not disclosed to or by any person except and insofar as:
1. The person identified shall give his consent; or
  2. Disclosure may be permitted under state or federal law.
- (b) Notwithstanding any other state statute or administrative regulation to the contrary, any information concerning individual clients or applicants in the possession of the Office of Employment and Training may be shared with any authorized representative of any other state or local governmental agency, if the agency has a direct, tangible, and legitimate interest in the individual. The agency receiving the information shall assure the confidentiality of all information received. The Office of Employment and Training may share information concerning a client or applicant with any private or quasi-private agency if:
1. The agency has an agreement with the cabinet assuring the confidentiality of the information; and
  2. The agency has a direct, tangible, and legitimate interest in the individual.

➔Section 26. KRS 151B.285 is amended to read as follows:

The Education *and Workforce Development* Cabinet shall administer and supervise state employment offices and perform any other duties within the Act of Congress entitled "An Act to provide for the establishment of a National Employment Service and for Cooperation with the State in the Promotion of Such System and for Other Purposes," approved June 6, 1933 (48 Stat. 113, U.S.C., Title 29, sec. 49(c)), as amended, and known as the Wagner-Peyser Act. All duties and powers relating to the establishment, maintenance, and operation of free public employment offices are vested in the Education *and Workforce Development* Cabinet. The provisions of the Wagner-Peyser Act, as amended, are accepted by this state, in conformity with Section 4 of that Act, and this state will observe and comply with the requirements of that Act. The Education *and Workforce Development* Cabinet is designated and constituted the agency of this state for the purposes of the Wagner-Peyser Act.

➔Section 27. KRS 151B.450 is amended to read as follows:

As used in KRS 151B.450 to 151B.475, unless the context requires otherwise:

- (1) "Assistive technology" means any item, piece of equipment, or device that enables an individual with a disability to improve his or her independence and quality of life;
- (2) "Board" means the board of directors of the Kentucky Assistive Technology Loan Corporation;
- (3) "Cabinet" means the Education *and Workforce Development* Cabinet;
- (4) "Corporation" means the Kentucky Assistive Technology Loan Corporation created under KRS 151B.455;
- (5) "Fund" means the Kentucky assistive technology loan fund created under KRS 151B.470;
- (6) "Qualified borrower" means an individual with a disability that affects a major life activity such as mobility, sensory and cognitive communications, or self-care, a parent or legal guardian of an individual with a disability, or a nonprofit organization that provides assistive technology to individuals with disabilities who meet the criteria for participating in the Kentucky assistive technology loan fund; and
- (7) "Qualified lender" means a financial lending institution or other qualified organization contracted with by the corporation to provide loans for the purchase of assistive technology.

➔Section 28. KRS 151B.455 is amended to read as follows:

- (1) The Kentucky Assistive Technology Loan Corporation is created and established as an independent de jure municipal corporation and political subdivision of the Commonwealth of Kentucky to perform essential

governmental and public functions for the purpose of improving the quality of life for disabled persons who are residents of the Commonwealth of Kentucky by providing the ability to obtain low-interest loans to qualified borrowers for the acquisition of assistive technology.

- (2) The corporation shall be governed by a board of directors consisting of seven (7) members as follows:
  - (a) The secretary of the Education *and Workforce Development* Cabinet or the secretary's designated representative;
  - (b) One (1) attorney with lending expertise;
  - (c) One (1) representative of a financial lending institution; and
  - (d) Four (4) public members with a knowledge of assistive technology representing a range of disabilities.
- (3) All board members shall be residents of the Commonwealth of Kentucky and all, with the exception of the secretary or the secretary's designee, shall be appointed by the Governor. Each public member shall be an individual with a disability, a parent of an individual with a disability, or a legal representative of an individual with a disability. In making appointments the Governor shall seek recommendations from disability-related associations and organizations representing the categories of disabilities for which appointments are being made.
- (4) For initial appointments to the board, two (2) public members shall be appointed for terms of four (4) years each, two (2) public members for terms of three (3) years each, the attorney member for a term of two (2) years, and the member representing a financial lending institution for a term of one (1) year. All succeeding terms shall be for a period of four (4) years each, and each appointee shall serve for the appointed term and until a successor has been appointed and has duly qualified. No person shall serve more than two (2) successive full terms.
- (5) If a vacancy on the board occurs, the Governor shall appoint a replacement who shall hold office during the remainder of the term vacated.
- (6) The Governor may remove any board member in case of incompetency, neglect of duties, gross immorality, or malfeasance in office, and may upon removal declare the position vacant and appoint a person to fill the vacancy as provided in other cases of vacancy. If a board member is so removed, he or she may appeal. Upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

➔Section 29. KRS 151B.460 is amended to read as follows:

- (1) At the first board meeting following initial appointment of all board members, the board shall elect a chair from its membership, and a chair shall be elected annually thereafter.
- (2) A majority of the board of directors of the corporation shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes, notwithstanding the existence of any vacancies on the board of directors.
- (3) The board of directors shall meet at least once a quarter, and may meet at other times upon call of the chair or at the request of a majority of board members, and with a minimum of seven (7) days' notice.
- (4) Board members shall receive no compensation for their services but may be entitled to payment of any reasonable and necessary expense actually incurred in discharging their duties under KRS 151B.450 to 151B.475, subject to the availability of funding.
- (5) If any board member has a direct or indirect interest in any qualified lender or any organization serving as a qualified borrower, the interest shall be disclosed and set forth in the minutes of the board, and the board member having the interest shall not participate in any action involving the organization in which he or she has the interest.
- (6) The Education *and Workforce Development* Cabinet shall provide technical, clerical, and administrative assistance to the board, together with necessary office space and personnel, and shall provide any other services and support necessary for the board to perform its functions. The cabinet shall keep a record of the proceedings of the board and shall be custodian of all books, documents, and papers which constitute the official records of the corporation. The board may enter into a contract with the cabinet as may be proper and appropriate for the provision of these services.

➔Section 30. KRS 151B.470 is amended to read as follows:

- (1) There is established in the State Treasury a permanent and perpetual fund to be known as the assistive technology loan fund, consisting of moneys that may be appropriated by the General Assembly, gifts, bequests, endowments, or grants from the United States government, its agencies and instrumentalities, and any other available sources of funds, public and private. Any fund balance at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in the fund shall be continuously appropriated only for the purposes specified in this section. Interest and income earned from the investment of funds shall remain in the fund and be credited to it.
- (2) The fund shall be used to provide loans to qualified borrowers within the Commonwealth for the purpose of acquiring assistive technology designed to help individuals with disabilities become more independent. Loans shall be made to qualified borrowers through qualified lenders with the fund being used as appropriate to negotiate reduced interest rates, to buy down interest rates, and to provide loan guarantees.
- (3) The fund shall be under the administrative control of the board.
- (4) If the corporation is dissolved, any unencumbered moneys appropriated by the General Assembly remaining in the fund shall revert to the general fund, and any other unencumbered moneys shall be transferred to the Education *and Workforce Development* Cabinet to be expended for programs and services for Kentuckians with disabilities.

➔Section 31. KRS 154.10-050 is amended to read as follows:

- (1) The secretary shall be the chief executive officer of the Cabinet for Economic Development and shall possess the professional qualifications appropriate for that office as determined by the board.
- (2) The board shall set the salary of the secretary, which shall be exempt from state employee salary limitations as set forth in KRS 64.640.
- (3) The secretary shall be responsible for the day-to-day operations of the cabinet and shall report and submit on an annual basis implementation plans to the board as provided in KRS 154.10-060; submit the strategic plan for economic development to the board in accordance with the provisions of KRS 154.10-120 and 154.10-125; submit program evaluation reports to the board in accordance with the provisions of KRS 154.10-140; carry out policy and program directives of the board; coordinate programs of the cabinet with all other agencies of state government having economic development responsibilities; hire all other personnel of the cabinet consistent with state law; and carry out all other duties and responsibilities assigned by state law.
- (4) The secretary shall prepare and submit the proposed budget of the cabinet to the chairman who shall present it to the board for final approval. Upon approval, the board shall submit the proposed budget to the Governor's Office for Policy and Management.
- (5) The secretary shall be reimbursed for all actual and necessary expenses incurred in the performance of all assigned duties and responsibilities.
- (6) The secretary shall, in carrying out the duties and responsibilities of the office and in administering the programs in KRS 154.12-216 to 154.12-278, give highest priority consideration in marketing, targeting, and recruiting new businesses, in expanding existing businesses, and in recommending state economic development loans, grants, and incentive programs administered by the authority, to Kentucky counties which have had an average countywide rate of unemployment of fifteen percent (15%) or greater in the most recent twelve (12) consecutive months for which unemployment figures are available, on the basis of the final unemployment figures calculated by the Office of Employment and Training within the Department of Workforce Investment within the Education *and Workforce Development* Cabinet.

➔Section 32. KRS 154.12-205 is amended to read as follows:

- (1) There is hereby created an independent, de jure corporation of the Commonwealth with all the general corporate powers incidental thereto which shall be known as the "Bluegrass State Skills Corporation." The corporation shall be a political subdivision of the state and shall be attached to the Cabinet for Economic Development.
- (2) The corporation is created and established to improve and promote the employment opportunities of the citizens of the Commonwealth by creating and expanding programs of skills training and education which meet the needs of business and industry.

- (3) The corporation shall be governed by a board of directors consisting of eighteen (18) members, including the following six (6) ex officio members: the commissioner of the Department of Workforce Investment or his or her designee, the secretary of the Cabinet for Economic Development, the commissioner of the Department of Labor, the president of the Council on Postsecondary Education, the secretary of the Education *and Workforce Development* Cabinet, and the president of the Kentucky Community and Technical College System. The twelve (12) other members shall be appointed by the Governor, including persons having knowledge and experience in business and industry, skills training, education, and minority employment; and at least one (1) of the twelve (12) members shall be appointed to represent labor organizations. Each member appointed by the Governor shall serve for a term of four (4) years, except that in making the initial appointments, the Governor shall appoint three (3) members to serve for one (1) year, three (3) members to serve for two (2) years, three (3) members to serve for three (3) years, and three (3) members to serve for four (4) years. All succeeding appointments shall be for a term of four (4) years.
- (4) In the event of a vacancy, the Governor may appoint a replacement member who shall hold office during the remainder of the term so vacated.
- (5) Any member may be removed from his appointment by the Governor for cause.
- (6) The Governor shall designate a member of the board as its chairman.
- (7) Members of the board of directors of the corporation, except for ex officio members, shall be entitled to compensation for their services in the amount of one hundred dollars (\$100) for each regular or special called meeting of the corporation, and all members shall be entitled to reimbursement for any actual and necessary expenses incurred in the performance of their duties.
- (8) The board of directors of the corporation shall annually elect a vice chairman, a secretary, and a treasurer. The secretary shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents, and papers filed with the corporation, and its official seal.
- (9) The secretary of the Cabinet for Economic Development shall hire an executive director and establish his salary. The executive director shall be the chief administrative and operational officer of the corporation and shall direct and supervise its administrative affairs and general management subject to the policies, control, and direction of the board.
- (10) All officers and employees of the corporation having access to its funding shall give bond to the corporation, at its expense, in the amount and with the surety as the board may prescribe.

➔Section 33. KRS 154.12-207 is amended to read as follows:

- (1) The corporation may, subject to appropriation from the General Assembly or from funds made available to the corporation from any other public or private source, provide grants-in-aid to educational institutions, and business and industry, not in excess of two hundred thousand dollars (\$200,000) per grant-in-aid. Such grants-in-aid shall be used exclusively for programs which are consistent with the provisions of this chapter.
- (2) To qualify for a grant-in-aid in which an educational institution will provide training, an educational institution and a business or industry shall submit a joint application to the corporation that contains a proposal for a program of skills training and education; a description of the program; the type of skills training or education to be provided; a statement of the total cost of the program and breakdown of the costs associated with equipment, personnel, facilities, and materials; and with respect to educational institutions only, a statement of the technical assistance and financial support for the program received or pledged from business and industry. To qualify for a grant-in-aid in which a provider other than an educational institution will provide training, the business or industry may independently submit a proposal to the corporation containing the same information as set forth in this subsection.
- (3) Approval of the grant-in-aid application by the board shall be based upon the following criteria:
  - (a) The program must be within the scope of KRS 154.12-204 to 154.12-208;
  - (b) Participants in the program must be limited to a Kentucky resident, as the term is defined in KRS 141.010;
  - (c) The program must involve an area of skills training and education which is needed by business and industry and for which a shortage of qualified individuals exists within the Commonwealth;

- (d) The grant-in-aid must be essential to the success of the program as the resources of the educational institution are inadequate to attract the technical assistance and financial support necessary from business and industry;
- (e) The educational institution must have obtained a firm commitment from business and industry for the information, technical assistance, and financial support which, together with the grant-in-aid, the resources of the applicant, and support from any other source, is sufficient to ensure the success of the program. In addition, the commitment of financial support from business and industry shall be equal to or greater than the amount of the requested grant-in-aid;
- (f) The educational institution must have established adequate auditing procedures and reporting methods for the submission of information and data as required by the corporation; and
- (g) Ninety percent (90%) of the participants receive a base hourly wage which is one hundred fifty percent (150%) of the federal minimum wage plus employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage, if the business and industry is located in a county of Kentucky which has had an average countywide rate of unemployment of fifteen percent (15%) or greater in the most recent twelve (12) consecutive months for which unemployment figures are available, on the basis of the final unemployment figures calculated by the Office of Employment and Training within the Department of Workforce Investment within the Education *and Workforce Development* Cabinet.

➔Section 34. KRS 154.12-2084 is amended to read as follows:

As used in KRS 154.12-2084 to 154.12-2089, unless the context requires otherwise:

- (1) "Approved company" means any qualified company seeking to sponsor an occupational upgrade training program or skills upgrade training program for the benefit of one (1) or more of its employees, which is approved by the authority to receive skills training investment credits in accordance with KRS 154.12-2084 to 154.12-2089;
- (2) "Approved costs" means:
  - (a) Fees or salaries required to be paid to instructors who are employees of the approved company, instructors who are full-time, part-time, or adjunct instructors with an educational institution, and instructors who are consultants on contract with an approved company in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company;
  - (b) Administrative fees charged by educational institutions in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company and specifically approved by the Bluegrass State Skills Corporation;
  - (c) The cost of supplies, materials, and equipment used exclusively in an occupational upgrade training program or skills upgrade training program sponsored by an approved company;
  - (d) The cost of leasing a training facility where space is unavailable at an educational institution or at the premises of an approved company in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company;
  - (e) Employee wages to be paid in connection with an occupational upgrade training program or skills upgrade training program sponsored by an approved company; and
  - (f) All other costs of a nature comparable to those described in this subsection;
- (3) "Bluegrass State Skills Corporation" means the Bluegrass State Skills Corporation created by KRS 154.12-205;
- (4) "Commonwealth" means the Commonwealth of Kentucky;
- (5) "Educational institution" means a public or nonpublic secondary or postsecondary institution or an independent provider within the Commonwealth authorized by law to provide a program of skills training or education beyond the secondary school level or to adult persons without a high school diploma or its equivalent;
- (6) "Employee" means any person:
  - (a) Who is currently a permanent full-time employee of the qualified company;

- (b) Who has been employed by the qualified company for the last twelve (12) calendar months immediately preceding the filing of the application for skills training investment credits by the qualified company;
- (c) Who is a Kentucky resident, as that term is defined in KRS 141.010; and
- (d) Who receives a base hourly wage which is one hundred fifty percent (150%) of the federal minimum wage plus employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage, if the qualified company is located in a county of Kentucky which has had an average countywide rate of unemployment of fifteen percent (15%) or greater in the most recent twelve (12) consecutive months for which unemployment figures are available, on the basis of the final unemployment figures calculated by the Office of Employment and Training within the Department of Workforce Investment in the Education *and Workforce Development* Cabinet.

For purposes of this subsection, a "full-time employee" means an employee who has been employed by the qualified company for a minimum of thirty-five (35) hours per week for more than two hundred fifty (250) work days during the most recently ended calendar year and is subject to the tax imposed by KRS 141.020;

- (7) "Occupational upgrade training" means employee training sponsored by a qualified company that is designed to qualify the employee for a promotional opportunity with the qualified company;
- (8) "Preliminarily approved company" means a qualified company seeking to sponsor an occupational upgrade training program or skills upgrade training program, which has received preliminarily approval from the authority under KRS 154.12-2088 to receive a certain maximum amount of skills training investment credits;
- (9) "Qualified company" means any person, corporation, limited liability company, partnership, limited partnership, sole proprietorship, firm, enterprise, franchise, association, organization, holding company, joint stock company, professional service corporation, or any other legal entity through which business is conducted that has been actively engaged in any of the following qualified activities within the Commonwealth for not less than three (3) consecutive years: manufacturing, including the processing, assembling, production, or warehousing of any property; processing of agricultural and forestry products; telecommunications; health care; product research and engineering; tool and die and machine technology; mining; tourism and operation of facilities to be used in the entertainment, recreation, and convention industry; and transportation in support of manufacturing. Notwithstanding the provisions of this subsection, any company whose primary purpose is the sale of goods at retail shall not constitute a qualified company;
- (10) "Skills upgrade training" means employee training sponsored by a qualified company that is designed to provide the employee with new skills necessary to enhance productivity, improve performance, or retain employment, including but not limited to technical and interpersonal skills training, and training that is designed to enhance the computer skills, communication skills, problem solving, reading, writing, or math skills of employees who are unable to function effectively on the job due to deficiencies in these areas, are unable to advance on the job, or who risk displacement because their skill deficiencies inhibit their training potential for new technology; and
- (11) "Skills training investment credit" means the credit against Kentucky income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, as provided in KRS 154.12-2086(1).

➔Section 35. KRS 154.20-150 is amended to read as follows:

- (1) On or before October 1, 1992, and on or before the first day of every third month thereafter, the authority shall provide a written project status report to the Legislative Research Commission, and the authority shall be compelled to send a representative to testify on the project status report and the authority shall provide additional information on any projects upon request by the Legislative Research Commission. The written project status report shall include but is not limited to:
  - (a) The current status of each project under consideration by the authority, the proposed cost of a project, for each project under consideration, including any proposed financial obligations of the authority, the number of jobs to be created or retained by each project under consideration, and a description of the applicants with respect to each project under consideration; and
  - (b) The current status of each project, along with an updated cost for each project in progress, including any financial obligations of the authority and a description of the principals with respect to each project in progress.

- (2) On or before the first day of each fiscal year, the authority shall submit an overview report to the Legislative Research Commission, on the success or failure of each completed project, in order to determine the effectiveness of the Kentucky Economic Development Finance Authority.
- (3) In addition to the project status report, all construction, reconstruction, or alteration, financed or facilitated in whole or in part by the authority shall be reported to the Office of Employment and Training within the Department of Workforce Investment in the Education *and Workforce Development* Cabinet and to the Kentucky Legislative Research Commission not later than fifteen (15) days following the end of the month in which the agreement or contract facilitating or permitting such activity was executed. This construction activity report shall be subject to public information requests as provided by KRS 61.878. Reports shall list subject construction activity by location of project site, and shall specify the type of construction, project owner, estimated cost of project, and estimated starting and completion dates if known.

➔Section 36. KRS 154.20-170 is amended to read as follows:

- (1) Industrial entities, agricultural business entities, business enterprises, or private sector firms which are members of a business network within the meaning of KRS 154.01-010 in a targeted industrial sector as set forth in the state strategic plan for economic development as prescribed in KRS 154.10-120, and businesses that compose the secondary wood products industry as defined in KRS 154.47-005(10), shall be given priority consideration under state economic development loan, grant, and incentive programs administered by the Kentucky Economic Development Finance Authority.
- (2) Notwithstanding the provisions of subsection (1) of this section, highest priority consideration under state economic development loan, grant, and incentive programs administered by the authority shall be given to those projects that are located in counties of Kentucky which have had an average countywide rate of unemployment of fifteen percent (15%) or greater in the most recent twelve (12) consecutive months for which unemployment figures are available, on the basis of the final unemployment figures calculated by the Office of Employment and Training within the Department of Workforce Investment in the Education *and Workforce Development* Cabinet.

➔Section 37. KRS 154.22-010 is amended to read as follows:

The following words and terms as used in KRS 154.22-010 to 154.22-080, unless the context clearly indicates a different meaning, shall have the following meanings:

- (1) "Activation date" means a date selected by an approved company in the tax incentive agreement at any time within a two (2) year period after the date of final approval of the tax incentive agreement by the authority;
- (2) "Affiliate" means the following:
  - (a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;
  - (b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;
  - (c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;
  - (d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:
    1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation, if:
      - a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
      - b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or

2. Two (2) or more corporations, if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;
  - (e) A grantor and a fiduciary of any trust;
  - (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
  - (g) A fiduciary of a trust and a beneficiary of that trust;
  - (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;
  - (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
  - (j) A fiduciary of a trust and a limited liability company more than fifty percent (50%) of the capital interest, or the interest in profits, of which is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
  - (k) A corporation, a partnership, and a limited partnership, if the same persons own:
    1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
    2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership or limited partnership;
  - (l) A corporation and a limited liability company, if the same persons own:
    1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
    2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
  - (m) A partnership, limited partnership, and a limited liability company, if the same persons own:
    1. More than fifty percent (50%) of the capital interest or profits in the partnership or limited partnership; and
    2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
  - (n) An S corporation and another S corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or
  - (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended;
- (3) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products;
- (4) "Approved company" means any eligible company seeking to locate an economic development project in a qualified county, which eligible company is approved by the authority pursuant to KRS 154.22-010 to 154.22-080;
- (5) "Approved costs" means:
  - (a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
  - (b) The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;

- (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project which is not paid by the contractor or contractors or otherwise provided for;
  - (d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
  - (e) All costs which shall be required to be paid under the terms of any contract or contracts for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and
  - (f) All other costs of a nature comparable to those described above;
- (6) "Assessment" means the job development assessment fee authorized by KRS 154.22-010 to 154.22-080;
- (7) "Authority" means the Kentucky Economic Development Finance Authority as created in KRS 154.20-010;
- (8) "Average hourly wage" means the wage and employment data published by the Office of Employment and Training within the Department of Workforce Investment in the Education *and Workforce Development* Cabinet collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:
- (a) Manufacturing;
  - (b) Transportation, communications, and public utilities;
  - (c) Wholesale and retail trade;
  - (d) Finance, insurance, and real estate; and
  - (e) Services;
- (9) "Commonwealth" means the Commonwealth of Kentucky;
- (10) (a) "Economic development project" means and includes:
1. The acquisition of ownership in any real estate in a qualified county by the authority, the approved manufacturing or agribusiness company, or its affiliate;
  2. The present ownership of real estate in a qualified county by the approved manufacturing or agribusiness company or its affiliate;
  3. The acquisition or present ownership of improvements or facilities, as described in paragraph (b) of this subsection, on land which is possessed or is to be possessed by the approved manufacturing or agribusiness company pursuant to a ground lease having a term of sixty (60) years or more;
  4. The new construction of an electric generation facility; and
  5. The legal possession of facilities by an approved company or its affiliate pursuant to a lease having a term equal to or greater than fifteen (15) years with a third-party entity, negotiated at arm's length, if the facility will be used by the approved company to conduct the approved activity for which the inducement has been granted. An economic development project qualifying under this subparagraph shall only be eligible for credits against equipment and costs related to installation of equipment and for purposes of the tax credits provided under the provisions of KRS 154.22-010 to 154.22-080 only to the extent of twenty thousand dollars (\$20,000) per job created by and maintained at the economic development project. Notwithstanding KRS 154.22-050(8) and 154.22-060, an economic development project qualifying under this subparagraph shall be eligible only for the aggregate assessments pursuant to KRS 154.22-070 withheld by the approved company each year and shall not be eligible for credit against Kentucky income tax and limited liability entity tax.
- (b) For purposes of paragraph (a)1. and 2. of this subsection, ownership of real estate shall only include fee ownership of real estate and possession of real estate pursuant to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by

the Financial Accounting Standards Board, November 1976. With respect to paragraph (a)1., 2., and 3. of this subsection or this paragraph, the construction, installation, equipping, and rehabilitation of improvements, including fixtures and equipment, and facilities necessary or desirable for improvement of the real estate, including surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage, storm water retention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities on the real estate, for use and occupancy by the approved company or its affiliates for manufacturing purposes, electric generation, or for agribusiness purposes. Pursuant to paragraph (a)3. and 5. of this subsection, an economic development project shall not include lease payments made pursuant to a ground lease for purposes of the tax credits provided under the provisions of KRS 154.22-010 to 154.22-080;

- (11) "Electric generation" means the generation of electricity for resale by means of combusting at least fifty percent (50%) of the total fuel used to generate electricity from coal or from gas derived from coal;
- (12) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity engaged in manufacturing, electric generation, or in agribusiness;
- (13) "Employee benefits" means nonmandated costs paid by an eligible company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k), or similar plans;
- (14) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;
- (15) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state income tax imposed by KRS 141.020;
- (16) "Inducements" means the assessment and the tax credits allowed by KRS 154.22-060;
- (17) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to it, together with the storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals;
- (18) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter;
- (19) "Qualified county" means any county certified as such by the authority pursuant to KRS 154.22-010 to 154.22-080;
- (20) "Revenues" shall not be considered state funds;
- (21) "State agency" shall have the meaning assigned to the term in KRS 56.440(8);
- (22) "Tax incentive agreement" means the agreement entered into, pursuant to KRS 154.22-050, between the authority and an approved company with respect to an economic development project;
- (23) "Kentucky gross receipts" means "Kentucky gross receipts" as defined in KRS 141.0401; and
- (24) "Kentucky gross profits" means "Kentucky gross profits" as defined in KRS 141.0401.

➔Section 38. KRS 154.22-040 is amended to read as follows:

- (1) Each year, the authority shall under its Rural Economic Development Assistance Program, on the basis of the final unemployment figures calculated by the Office of Employment and Training within the Department of Workforce Investment in the Education *and Workforce Development* Cabinet, determine which counties have had a countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth in the most recent five (5) consecutive calendar years, or which have had an average countywide rate of unemployment exceeding the statewide unemployment rate of the Commonwealth by two hundred percent (200%) in the most recent calendar year, and shall certify those counties as qualified counties. A county not certified on the basis of final unemployment figures may also be certified as a qualified county if the authority

determines the county is one (1) of the sixty (60) most distressed counties in the Commonwealth based on the following criteria with equal weight given to each criterion:

- (a) The average countywide rate of unemployment in the most recent three (3) consecutive calendar years, on the basis of final unemployment figures calculated by the Office of Employment and Training within the Department of Workforce Investment in the Education *and Workforce Development* Cabinet;
- (b) In each county the percentage of adults twenty-five (25) years of age and older who have attained at least a high school education or equivalent, on the basis of the most recent data available from the United States Department of Commerce, Bureau of the Census; and
- (c) Road quality, as quantified by the access within a county to roads ranked in descending order from best quality to worst quality as follows: two (2) or more interstate highways, one (1) interstate highway, a state four (4) lane parkway, four (4) lane principal arterial access to an interstate highway, state two (2) lane parkway and none of the preceding road types, as certified by the Kentucky Transportation Cabinet to the authority.

If the authority determines that a county which has previously been certified as a qualified county no longer meets the criteria of this subsection, the authority shall decertify that county. The authority shall not provide inducements for any facilities in that county and an approved company shall not be eligible for the inducements offered by KRS 154.22-010 to 154.22-070 unless the tax incentive agreements required herein are entered into by all parties prior to July 1 of the year following the calendar year in which the authority decertified that county. In addition, the authority shall certify coal-producing counties, not otherwise certified as qualified counties in this subsection, for economic development projects involving the new construction of electric generation facilities. A coal-producing county shall mean a county in the Commonwealth of Kentucky that has produced coal upon which the tax imposed under KRS 143.020 was paid at any time. For economic development projects undertaken in a regional industrial park, as defined in KRS 42.4588, or in an industrial park created pursuant to an interlocal agreement in which revenues are shared as provided in KRS 65.245, where the physical boundaries of the industrial park lie within two (2) or more counties of which at least one (1) of the counties is a qualified county under this section, an eligible company undertaking an economic development project within the physical boundaries of the industrial park may be approved for the inducements under KRS 154.22-010 to 154.22-080.

- (2) The authority shall establish the procedures and standards for the determination and approval of eligible companies and their economic development projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A. The criteria for approval of eligible companies and economic development projects shall include but not be limited to the creditworthiness of eligible companies; the number of new jobs to be provided by an economic development project to residents of the Commonwealth; and the likelihood of the economic success of the economic development project.
- (3) The economic development project shall involve a minimum investment of one hundred thousand dollars (\$100,000) by the eligible company and shall result in the creation by the eligible company, within two (2) years from the date of the final approval authorizing the economic development project, of a minimum of fifteen (15) new full-time jobs at the site of the economic development project for Kentucky residents to be employed by the eligible company and to be held by persons subject to the personal income tax of the Commonwealth. The authority may extend this two (2) year period upon the written application of an eligible company requesting an extension.
- (4) (a) Within six (6) months after the activation date, the approved company shall compensate a minimum of ninety percent (90%) of its full-time employees whose jobs were created with base hourly wages equal to either:
  - 1. Seventy-five percent (75%) of the average hourly wage for the Commonwealth; or
  - 2. Seventy-five percent (75%) of the average hourly wage for the county in which the project is to be undertaken.
- (b) If the base hourly wage calculated in paragraph (a)1. or 2. of this subsection is less than one hundred fifty percent (150%) of the federal minimum wage, then the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage. However, for projects receiving preliminary approval of the authority prior to July 1, 2008, the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage existing on January 1, 2007. In addition to the applicable base hourly wage calculated above, the eligible company shall provide employee benefits equal to at least fifteen percent

(15%) of the applicable base hourly wage; however, if the eligible company does not provide employee benefits equal to at least fifteen percent (15%) of the applicable base hourly wage, the eligible company may qualify under this section if it provides the employees hired by the eligible company as a result of the economic development project total hourly compensation equal to or greater than one hundred fifteen percent (115%) of the applicable base hourly wage through increased hourly wages combined with employee benefits.

- (c) The requirements of this subsection shall not apply to eligible companies which are nonprofit corporations established under KRS 273.163 to 273.387 and whose employees are handicapped and sheltered workshop workers employed at less than the established minimum wage as authorized by KRS 337.295.

For an eligible company, within a regional industrial park which lies within two (2) or more counties, the calculation of the wage and benefit requirement shall be determined by averaging the average county hourly wage for all counties within the regional industrial park.

- (5) No economic development project which will result in the replacement of agribusiness, manufacturing, or electric generation facilities existing in the state shall be approved by the authority; however, the authority may approve an economic development project that:
- (a) Rehabilitates an agribusiness, manufacturing, or electric generation facility:
1. Which has not been in operation for a period of ninety (90) or more consecutive days;
  2. For which the current occupant of the facility has published a notice of closure so long as the eligible company intending to acquire the facility is not an affiliate of the current occupant; or
  3. The title to which is vested in other than the eligible company or an affiliate of the eligible company and that is sold or transferred pursuant to a foreclosure ordered by a court of competent jurisdiction or an order of a bankruptcy court of competent jurisdiction;
- (b) Replaces an agribusiness, manufacturing, or electric generation facility existing in the Commonwealth:
1. The title to which shall have been taken under the exercise of the power of eminent domain, or the title to which shall be the subject of a nonappealable judgment granting the authority to exercise the power of eminent domain, in either event to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
  2. Which has been damaged or destroyed by fire or other casualty to the extent that normal operations cannot be resumed at the facility within twelve (12) months; or
- (c) Replaces an existing agribusiness, manufacturing, or electric generation facility located in the same qualified county, and the existing agribusiness, manufacturing, or electric generation facility to be replaced cannot be expanded due to the unavailability of real estate at or adjacent to the agribusiness, manufacturing, or electric generation facility to be replaced. Any economic development project satisfying the requirements of this subsection shall only be eligible for inducements to the extent of the expansion, and no inducements shall be available for the equivalent of the agribusiness, manufacturing, or electric generation facility to be replaced. No economic development project otherwise satisfying the requirements of this subsection shall be approved by the authority which results in a lease abandonment or lease termination by the approved company without the consent of the lessor.
- (6) With respect to each eligible company making an application to the authority for inducements, and with respect to the economic development project described in the application, the authority shall request materials and make inquiries of the applicant as necessary or appropriate. Upon review of the application and completion of initial inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and authorizing the undertaking of the economic development project. After preliminary approval, the authority may by final approval designate an eligible company to be an approved company.

➔Section 39. KRS 154.23-010 is amended to read as follows:

As used in KRS 154.23-005 to 154.23-079, unless the context clearly indicates otherwise:

- (1) "Affiliate" has the same meaning as in KRS 154.22-010;

- (2) "Approved company" means an eligible company that locates an economic development project in a qualified zone, as provided for in KRS 154.23-030;
- (3) "Approved costs" means:
- (a) For an approved company that establishes a new manufacturing facility or expands an existing manufacturing facility, the following obligations incurred in its economic development project, including rent under leases subject to subsection (8)(b)4. of this section:
    - 1. The cost of labor, contractors, subcontractors, builders, and material workers in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
    - 2. The cost of acquiring real estate or rights in land and any cost incidental thereto, including recording fees;
    - 3. The cost of contract bonds and insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project that is not paid by the contractor or contractors or otherwise provided for;
    - 4. The cost of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all duties required by or consequent to the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
    - 5. All costs required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and
    - 6. All other costs of a nature comparable to those described above; or
  - (b) For an approved company that establishes a new service or technology business or expands existing service or technology operations, up to a maximum of fifty percent (50%) of the total start-up costs during the term of the service and technology agreement, plus up to a maximum of fifty percent (50%) of the annual rent for each elapsed year of the service and technology agreement;
- (4) "Assessment" means the job development assessment fee authorized by KRS 154.23-055;
- (5) "Authority" means the Kentucky Economic Development Finance Authority, as created in KRS 154.20-010;
- (6) "Average hourly wage" means the wage and employment data published by the Office of Employment and Training within the Department of Workforce Investment within the Education *and Workforce Development* Cabinet collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:
- (a) Manufacturing;
  - (b) Transportation, communications, and public utilities;
  - (c) Wholesale and retail trade;
  - (d) Finance, insurance, and real estate; and
  - (e) Services;
- (7) "Commonwealth" means the Commonwealth of Kentucky;
- (8) "Economic development project" or "project" means:
- (a) A new or expanded service or technology activity conducted at a new or expanded site by:
    - 1. An approved company; or
    - 2. An approved company and its affiliate or affiliates; or
  - (b) Any of the following activities of an approved company engaged in manufacturing:
    - 1. The acquisition of or present ownership in any real estate in a qualified zone for the purposes described in KRS 154.23-005 to 154.23-079, which ownership shall include only fee simple ownership of real estate and possession of real estate according to a capital lease as determined in

accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976;

2. The acquisition or present ownership of improvements or facilities on land that is possessed or is to be possessed by the approved company in a ground lease having a term of sixty (60) years or more; provided, however, that this project shall not include lease payments made under a ground lease for purposes of calculating the tax credits offered under KRS 154.23-005 to 154.23-079;
  3. The construction, installation, equipping, and rehabilitation of improvements, fixtures, equipment, and facilities necessary or desirable for improvement of the real estate owned, used, or occupied by the approved company for manufacturing purposes. Construction activities include surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and providing drainage and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electric, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; or similar activities as the authority may determine necessary for construction; and
  4. The leasing of real estate and the buildings and fixtures thereon acquired, constructed, and installed with funds from grants under KRS 154.23-060;
- (9) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other legal entity engaged in manufacturing, or service or technology; however, any company whose primary purpose is retail sales shall not be an eligible company;
  - (10) "Employee benefits" means nonmandated costs paid by an eligible company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k), or similar plans;
  - (11) "Final approval" means action taken by the authority that authorizes the eligible company to receive inducements in connection with a project under KRS 154.23-005 to 154.23-079;
  - (12) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state income tax imposed by KRS 141.020;
  - (13) "Inducements" means the assessment and the income tax credits allowed to an approved company under KRS 154.23-050 and 154.23-055;
  - (14) "Local government" means a city, county, or urban-county government;
  - (15) "Manufacturing" means to make, assemble, process, produce, or perform any other activity that changes the form or conditions of raw materials and other property, and shall include any ancillary activity to the manufacturing process, such as storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, the extraction of minerals or coal, or processing of these resources;
  - (16) "Person" means an individual, sole proprietorship, partnership, limited partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity or government, whether federal, state, county, city, or otherwise, including without limitation any instrumentality, division, political subdivision, district, court, agency, or department thereof;
  - (17) "Preliminary approval" means action taken by the authority that conditions final approval of an eligible company and its economic development project upon satisfaction by the eligible company of the applicable requirements under KRS 154.23-005 to 154.23-079;
  - (18) "Qualified employee" means an individual subject to Kentucky income tax who has resided in the qualified zone where the project exists for at least twelve (12) consecutive months preceding full-time employment by an approved company;
  - (19) "Qualified statewide employee" means an individual subject to Kentucky income tax who has resided in any census tract or county in the Commonwealth that meets the criteria in KRS 154.23-015, regardless of whether the tract or county is in a qualified zone, for at least twelve (12) consecutive months preceding full-time employment by an approved company;
  - (20) "Qualified zone" means any census tract or county certified as such by the authority in KRS 154.23-015 and 154.23-020;

- (21) "Rent" means:
- (a) The actual annual rent or leasing fee paid by an approved company to a bona fide entity negotiated at arm's length for the use of a building by the approved company to conduct the approved project for which the inducement has been granted; or
  - (b) The fair rental value on an annual basis in a building owned by the approved company of the space used by the approved company to conduct the approved project for which the inducement has been granted as determined by the authority using criteria that are customary in the real estate industry for the type of building being used. The fair rental value shall include an analysis of the cost of amortizing the cost of land and building over the period of time customary in the real estate industry for the type of building and for the land being utilized; and
  - (c) Rent shall include the customary cost of occupancy, including but not limited to property taxes, heating and air conditioning, electricity, water, sewer, and insurance;
- (22) "Service and technology agreement" means any agreement entered into under KRS 154.23-040 on behalf of the authority, an approved company engaged in service or technology, and third-party lessors, if applicable, with respect to an economic development project;
- (23) (a) "Service or technology" means either:
- 1. Any activity involving the performance of work, except work classified by the divisions, including successor divisions, of agriculture, forestry and fishing, mining, utilities, construction, manufacturing, wholesale trade, retail trade, real estate rental and leasing, educational services, accommodation and food services, and public administration in accordance with the "North American Industry Classification System," as revised by the United States Office of Management and Budget from time to time, or any successor publication; or
  - 2. Regional or headquarters operations of an entity engaged in an activity listed in subparagraph 1. of this paragraph.
- (b) Notwithstanding paragraph (a) of this subsection, "service or technology" shall not include any activity involving the performance of work by an individual who is providing direct service to the public pursuant to a license issued by the state or an association that licenses in lieu of the state;
- (24) "Start-up costs" means the acquisition cost associated with the project and related to furnishing and equipping a building for ordinary business functions, including computers, nonrecurring costs of fixed telecommunication equipment, furnishings, office equipment, and the relocation of out-of-state equipment, as verified and approved by the authority in accordance with KRS 154.23-040;
- (25) "Tax incentive agreement" means that agreement entered into pursuant to KRS 154.23-035 between the authority and an approved company with respect to an economic development project;
- (26) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and
- (27) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401.

➔Section 40. KRS 154.23-015 is amended to read as follows:

- (1) Upon written application by a county, urban-county government, or city of the first class, the authority shall certify one (1) to five (5) contiguous census tracts or a county certified by the authority in accordance with KRS 154.22-040 as a qualified zone. In the case of certification based on one (1) to five (5) contiguous census tracts, each census tract shall independently meet each of the following criteria, as verified by the Office of Employment and Training within the Department of Workforce Investment in the Education *and Workforce Development* Cabinet:
- (a) A minimum total poverty rate of one hundred fifty percent (150%) of the United States poverty rate as determined by the most recent decennial census;
  - (b) An unemployment rate that exceeds the statewide unemployment rate as determined on the basis of the most recent decennial census; and
  - (c) A minimum population density of two hundred percent (200%) of the average Kentucky census tract population density as determined by the most recent decennial census.

- (2) Census tract information shall be based upon United States census data as set forth in the most recent edition of Census of Population and Housing: Population and Housing Characteristics for Census Tracts and Block Numbering Areas published by the United States Bureau of the Census.
- (3) The authority shall certify no more than one (1) qualified zone within each county of the Commonwealth, except in the case of a county certified under KRS 154.22-040, the entire county shall constitute the qualified zone.
- (4) A qualified zone shall commence on the date of certification by the authority and continue thereafter, except that at the time new decennial census data becomes available, the authority shall decertify any census tract that no longer meets the criteria of subsection (1) of this section for qualified zone status. The authority shall not give preliminary approval to any project in a decertified census tract. An approved company whose project is located in a decertified census tract shall not be eligible for the inducements offered by KRS 154.23-005 to 154.23-079, unless the tax incentive agreement or service and technology agreement is entered into by all parties prior to July 1 of the year following the calendar year in which the authority decertified that tract.
- (5) If decertification causes a formerly certified contiguous census tract to become noncontiguous, the applicant shall have the discretion to eliminate or maintain the noncontiguous tract. If the applicant eliminates the noncontiguous tract, it may replace the noncontiguous tract with another qualifying census tract, subject to approval of the authority.
- (6) A county, urban-county government, or city of the first class shall have no authority to request decertification of a census tract, and any addition of a census tract requested by a county, urban-county government, or city of the first class under KRS 154.23-020 shall be contiguous to a census tract that continues to meet the criteria under this section.
- (7) The authority shall pay its costs of counsel relating to zone certification.

➔Section 41. KRS 154.24-010 is amended to read as follows:

The following words and terms, unless the context clearly indicates a different meaning, shall have the following respective meanings in KRS 154.24-010 to 154.24-150:

- (1) "Affiliate" has the same meaning as in KRS 154.22-010;
- (2) "Agreement" means the service and technology agreement made pursuant to KRS 154.24-120, between the authority and an approved company with respect to an economic development project;
- (3) "Approved company" means any eligible company seeking to locate an economic development project from outside the Commonwealth into the Commonwealth, or undertaking an economic development project in the Commonwealth for which it is approved pursuant to KRS 154.24-100;
- (4) "Approved costs" means fifty percent (50%) of the total of the start-up costs up to a maximum of ten thousand dollars (\$10,000) per new full-time job created and to be held by a Kentucky resident subject to the personal income tax of the Commonwealth, plus fifty percent (50%) of the annual rent for each elapsed year of the service and technology agreement;
- (5) "Assessment" means the "service and technology job creation assessment fee" authorized by KRS 154.24-110;
- (6) "Authority" means the Kentucky Economic Development Finance Authority, as created in KRS 154.20-010;
- (7) "Average hourly wage" means the wage and employment data published by the Office of Employment and Training within the Department of Workforce Investments within the Education *and Workforce Development* Cabinet collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:
  - (a) Manufacturing;
  - (b) Transportation, communications, and public utilities;
  - (c) Wholesale and retail trade;
  - (d) Finance, insurance, and real estate; and
  - (e) Services;

- (8) "Commonwealth" means the Commonwealth of Kentucky;
- (9) "Economic development project" or "project" means a new or expanded service or technology activity conducted at a new or expanded site by:
- (a) An approved company; or
  - (b) An approved company and its affiliate or affiliates;
- (10) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity engaged in service or technology and meeting the standards promulgated by the authority in accordance with KRS Chapter 13A;
- (11) "Employee benefits" means nonmandated costs paid by an approved company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k) or similar plans;
- (12) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;
- (13) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state tax imposed by KRS 141.020;
- (14) "In lieu of credits" means a local government appropriation to the extent permitted by law, or other form of local government grant or service benefit, directly related to the economic development project and in an amount equal to one percent (1%) of employees' gross wages, exclusive of any noncash benefits provided to an employee, or the provision by a local government of an in-kind contribution directly related to the economic development project and in an amount equal to one half (1/2) of the rent for the duration of the agreement;
- (15) "Inducements" means the tax credits allowed and the assessment authorized by KRS 154.24-110, which are intended to induce companies engaged in service and technology industries to locate or expand in the Commonwealth;
- (16) "Person" means an individual, sole proprietorship, partnership, limited partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity or government, whether federal, state, county, city, or otherwise, including without limitation any instrumentality, division, political subdivision, district, court, agency, or department thereof;
- (17) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter;
- (18) "Rent" means:
- (a) The actual annual rent or leasing fee paid by an approved company to a bona fide entity negotiated at arms length for the use of a building by the approved company to conduct the approved activity for which the inducement has been granted; or
  - (b) The fair rental value on an annual basis in a building owned by the approved company of the space used by the approved company to conduct the approved activity for which the inducement has been granted as determined by the authority using criteria which is customary in the real estate industry for the type of building being used. The fair rental value shall include an analysis of the cost of amortizing the cost of land and building over the period of time customary in the real estate industry for the type of building and for the land being utilized;
  - (c) Rent shall include the customary cost of occupancy, including but not limited to property taxes, heating and air-conditioning, electricity, water, sewer, and insurance;
- (19) (a) "Service or technology" means either:
- 1. Any activity involving the performance of work, except work classified by the divisions, including successor divisions, of agriculture, forestry and fishing, mining, utilities, construction, manufacturing, wholesale trade, retail trade, real estate rental and leasing, educational services, accommodation and food services, and public administration in accordance with the "North American Industry Classification System," as revised by the United States Office of Management and Budget from time to time, or any successor publication; or
  - 2. Regional or headquarters operations of an entity engaged in an activity listed in subparagraph 1. of this paragraph.

(b) Notwithstanding paragraph (a) of this subsection, "service or technology" shall not include any activity involving the performance of work by an individual who is providing direct service to the public pursuant to a license issued by the state or an association that licenses in lieu of the state unless seventy-five percent (75%) of the services provided by the eligible company from the project are provided to persons located outside the Commonwealth during the period in which it receives the inducements authorized in KRS 154.24-110; and

(20) "Start-up costs" means the acquisition cost associated with the project related to the furnishing and equipping the building for ordinary business functions, including computers, furnishings, office equipment, the relocation of out-of-state equipment, and nonrecurring costs of fixed telecommunication equipment as verified and approved by the authority in accordance with KRS 154.24-130.

➔Section 42. KRS 154.26-080 is amended to read as follows:

- (1) The authority shall establish standards for the determination and approval of eligible companies and their projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A.
- (2) The criteria for approval of eligible companies and economic revitalization projects shall include but not be limited to the:
  - (a) Need for the project;
  - (b) New capital investment in the project that will result in financial stability for the manufacturing or coal mining and processing facility; and
  - (c) Retention or expansion of the greatest number of employees at the manufacturing or coal mining and processing facility.
- (3) With respect to each eligible company making an application to the authority for inducements, and with respect to the project described in the application, the authority shall make inquiries and request materials of the applicant, including but not limited to written evidence that except for a substantial investment in the project, assisted by the inducements authorized by KRS 154.26-015 to 154.26-100, the eligible company will:
  - (a) Close its manufacturing or coal mining and processing facility; and
  - (b) Permanently lay off its employees and cease operations; or
  - (c) Not resume operations of a closed facility as permitted by KRS 154.26-010(9).
- (4) The eligible company shall, in a manner acceptable to the authority, detail the condition of the facility, including but not limited to financial, efficiency, and productivity matters; explain in detail why the company intends to close the facility or not resume operations of the facility as permitted by KRS 154.26.010(9); and set out alternatives that are available to the company.
- (5) As a part of its application, an eligible company as described in KRS 154.26-010(10)(b) may request an emergency declaration based upon the urgency of the request and its impact on the local or regional economy.
- (6) A request for an emergency declaration shall be reviewed by the secretary of the Cabinet for Economic Development, the secretary of the Education *and Workforce Development* Cabinet, and the secretary of the Finance and Administration Cabinet and their findings in connection with the emergency declaration shall be delivered to the authority.
- (7) If the emergency declaration is granted in accordance with subsection (6) of this section, the eligible company shall not be subject to the requirements contained in subsection (8), (9), or (11) of this section.
- (8) In accordance with, and after the adoption of a resolution under subsection (10) of this section, the authority shall engage the services of a competent consulting firm or technical resource to analyze the data made available by the company, and to collect and analyze additional information necessary to determine that, in the independent judgment of the consultant, the company will close the facility or not resume operations of the facility as permitted by KRS 154.26-010(9) absent a substantial investment in the project, assisted by the inducements authorized by KRS 154.26-015 to 154.26-100. The company shall pay the cost of this evaluation.
- (9) The company shall cooperate with the consultant and provide all of the data which could reasonably be required by the consultant to make a fair assessment of the company's intentions to close the facility or not resume operations of the facility as permitted by KRS 154.26-010(9).

- (10) After a review of relevant materials and completion of inquiries, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily-approved company and authorizing the undertaking of the economic revitalization project.
- (11) The authority shall review the report of the consultant and other information which has been made available to it in order to assist the authority in determining whether the company intends to close the facility for valid reasons or whether it intends or is able to resume operations of the facility in accordance with the requirements of KRS 154.26-010(10)(b) if inducements are granted. The authority shall determine the potential of the proposed revitalization project to make the facility stable, productive, and competitive in its market.
- (12) After the review of the consultant's report or if an emergency declaration has been issued in accordance with subsection (6) of this section, the authority shall hold a public hearing to solicit public comment from any person, group, or interested party regarding the proposed project.
- (13) After the public hearing, the authority, by resolution, may:
  - (a) Declare the jobs then existing at the facility to be lost or the company unable to resume operations as permitted by KRS 154.26-010(9);
  - (b) Give its final approval to the eligible company's application for a project; and
  - (c) Grant to the eligible company the status of an approved company.

The decision reached by the authority shall be final and no appeal shall be granted.

- (14) All meetings of the authority shall be held in accordance with KRS 61.805 to 61.850. The authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

➔Section 43. KRS 154.28-010 is amended to read as follows:

As used in KRS 154.28-010 to 154.28-100, unless the context clearly indicates otherwise:

- (1) "Activation date" means a date selected by an approved company in the agreement at any time within the two (2) year period after the date of final approval of the agreement by the authority;
- (2) "Affiliate" has the same meaning as in KRS 154.22-010;
- (3) "Agreement" means the tax incentive agreement entered into, pursuant to KRS 154.28-090, between the authority and an approved company with respect to an economic development project;
- (4) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products;
- (5) "Approved company" means any eligible company, approved by the authority pursuant to KRS 154.28-080, requiring an economic development project;
- (6) "Approved costs" means:
  - (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, rehabilitation, and installation of an economic development project;
  - (b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, rehabilitation, and installation of an economic project which is not paid by the vendor, supplier, deliverymen, contractors, or otherwise else provided;
  - (c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation, and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, rehabilitation, and installation of an economic development project;
  - (d) All costs which shall be required to be paid under the terms of any contract for the acquisition, construction, rehabilitation, and installation of an economic development project;
  - (e) All costs which shall be required for the installation of utilities such as water, sewer, sewer treatment, gas, electricity, communications, railroads, and similar facilities, and including offsite construction of the facilities paid for by the approved company; and

- (f) All other costs comparable to those described above;
- (7) "Assessment" means the job development assessment fee authorized by KRS 154.28-010 to 154.28-100;
- (8) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;
- (9) "Average hourly wage" means the wage and employment data published by the Office of Employment and Training within the Department of Workforce Investment in the Education *and Workforce Development* Cabinet collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:
  - (a) Manufacturing;
  - (b) Transportation, communications, and public utilities;
  - (c) Wholesale and retail trade;
  - (d) Finance, insurance, and real estate; and
  - (e) Services;
- (10) "Commonwealth" means the Commonwealth of Kentucky;
- (11) (a) "Economic development project" or "project" means and includes:
  - 1. The acquisition of ownership in any real estate by the approved manufacturing or agribusiness company or its affiliate;
  - 2. The present ownership of real estate by the approved manufacturing or agribusiness company or its affiliate;
  - 3. The acquisition or present ownership of improvements or facilities, as described in paragraph (b) of this subsection, on land which is possessed or is to be possessed by the approved company pursuant to a ground lease having a term of sixty (60) years or more; and
  - 4. The legal possession of facilities by an approved company or its affiliate pursuant to a lease having a term equal to or greater than ten (10) years with a third-party entity, negotiated at arm's length, if the facility will be used by the approved company to conduct the approved activity for which the inducement has been granted. An economic development project qualifying under this subparagraph shall only be eligible for credits against equipment and costs related to installation of equipment and for purposes of the tax credits provided under the provisions of KRS 154.28-010 to 154.28-090 only to the extent of twenty thousand dollars (\$20,000) per job created by and maintained at the economic development project. Notwithstanding KRS 154.28-090, an economic development project qualifying under this subparagraph shall be eligible only for the aggregate assessments pursuant to KRS 154.28-110 withheld by the approved company each year and shall not be eligible for credit against Kentucky income tax and limited liability entity tax.
- (b) For purposes of paragraph (a)1. and 2. of this subsection, ownership of real estate shall only include fee ownership of real estate and possession of real estate pursuant to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976. With respect to paragraph (a)1., 2., and 3. of this subsection, the construction, installation, equipping, and rehabilitating of improvements, including fixtures and equipment directly involved in the manufacturing process, and facilities necessary or desirable for improvement of the real estate shall include: surveys, site tests, and inspections; subsurface site work and excavation; removal of structures, roadways, cemeteries, and other site obstructions; filling, grading, provision of drainage, and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; offsite construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities or agribusiness operations on the real estate for the use of the approved company or its affiliates for manufacturing or agribusiness operational purposes. Pursuant to paragraph (a)3. and 4. of this subsection and this paragraph, an economic development project shall not include lease payments made pursuant to a ground lease for purposes of the tax credits provided under the provisions of KRS 154.28-010 to 154.28-100. An economic development project shall include the equipping of a facility with equipment but, for purposes of the tax credits provided

under the provisions of KRS 154.28-010 to 154.28-090, only to the extent of twenty thousand dollars (\$20,000) per job created by and maintained at the economic development project;

- (12) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, trust, or any other entity engaged in manufacturing or agribusiness operations;
- (13) "Employee benefits" means nonmandated costs paid by an eligible company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k), or similar plans;
- (14) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state income tax imposed by KRS 141.020;
- (15) "Inducement" means the assessment or the Kentucky income tax credit as set forth in KRS 154.28-090;
- (16) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property, and any activity functionally related to it, together with storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals;
- (17) "State agency" shall have the meaning assigned to the term in KRS 56.440(8);
- (18) "Kentucky gross profits" means "Kentucky gross profits" as defined in KRS 141.0401; and
- (19) "Kentucky gross receipts" means "Kentucky gross receipts" as defined in KRS 141.0401.

➔Section 44. KRS 154.47-015 is amended to read as follows:

- (1) The Kentucky Wood Products Competitiveness Corporation is created and established, as a de jure municipal corporation and political subdivision of the Commonwealth of Kentucky which shall be a public body corporate and politic, performing functions and purposes essential to improving and promoting the health and general welfare of the people of the Commonwealth through promoting, enhancing, and developing the Commonwealth's secondary wood products industries by:
  - (a) Disseminating information;
  - (b) Providing services;
  - (c) Developing workforce training measures and standards to support value-added functions with regard to design, processing and manufacture, and marketing of wood products; and
  - (d) Providing financial support for the deployment of new or improved technology and world-class manufacturing systems to businesses engaged in the production and manufacture of value-added wood products.
- (2) The corporation shall be governed by a board of thirteen (13) members, consisting of seven (7) members representing the private sector including four (4) representatives of Kentucky's secondary wood products industry; one (1) member representing the Kentucky Forest Products Council as created and established by KRS 154.47-110; one (1) member representing the Education *and Workforce Development* Cabinet; and four (4) members representing the following universities with one (1) member each representing the University of Kentucky, the University of Louisville, Eastern Kentucky University, and Morehead State University.
- (3) The initial appointments to the board shall be made on or before October 1, 1994, in the following manner:
  - (a) Seven (7) private sector members shall be made by the Governor from names of persons submitted on or before August 30, 1994, in the following manner:
    - 1. Two (2) from a list of six (6) nominees from the secondary wood products industry submitted in writing by the Kentucky Wood Manufacturers Network;
    - 2. Two (2) from a list of six (6) nominees from the secondary wood products industry submitted in writing by the Kentucky Forest Industries Association;
    - 3. One (1) from a list of three (3) nominees submitted in writing by the Mountain Association for Community Economic Development;
    - 4. One (1) from a list of three (3) nominees submitted in writing from grass roots community economic development organizations that have a demonstrated interest in the development of secondary wood products industries; and

5. One (1) from a list of three (3) nominees from private business submitted in writing by the Kentucky Economic Development Partnership.
  - (b) The Kentucky Forest Products Council, the secretary of the Education *and Workforce Development* Cabinet, and the presidents of the University of Kentucky, the University of Louisville, Eastern Kentucky University, and Morehead State University shall each designate a representative of their respective organizations to be appointed by the Governor to the board.
  - (c) If any organization or institution as specified in paragraph (a) of this subsection does not nominate persons for appointment as prescribed therein, the Governor may solicit names from any other source, or he may appoint from the list of names submitted by the remaining organizations.
  - (d) The initial term of office for the seven (7) private sector members shall be staggered so that four (4) members shall serve for a term of three (3) years and three (3) members shall serve for a term of four (4) years. Subsequent appointments shall be made in the same manner as prescribed for original appointments, and shall be for four (4) year terms each.
- (4) Except as prescribed in subsection (3)(d) of this section and for the appointee representing the Education *and Workforce Development* Cabinet, all appointments shall have a term of four (4) years. The term for the person appointed from the Education *and Workforce Development* Cabinet shall be the same as that of the Governor. Any appointment made by the Governor to fill an unexpired term shall be only for the remaining time of the vacated appointment. Nothing contained in this section shall be construed as prohibiting the reappointment of a member of the board to succeeding terms if, the person to be reappointed has been nominated or designated in the manner as prescribed for original appointments set forth in this section.

➔Section 45. KRS 154.48-010 is amended to read as follows:

As used in KRS 154.48-010 to 154.48-035, unless the context clearly indicates otherwise:

- (1) "Activation date" means a date selected by an approved company in the tax incentive agreement at any time within a two (2) year period after the date of final approval of the tax incentive agreement by the authority;
- (2) "Affiliate" means the following:
  - (a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;
  - (b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;
  - (c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;
  - (d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:
    1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation if:
      - a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
      - b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or
    2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

- (e) A grantor and a fiduciary of any trust;
  - (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
  - (g) A fiduciary of a trust and a beneficiary of that trust;
  - (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;
  - (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
  - (j) A fiduciary of a trust and a limited liability company more than fifty percent (50%) of the capital interest, or the interest in profits, of which is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
  - (k) A corporation, a partnership, or a limited partnership if the same persons own:
    - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
    - 2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership or limited partnership;
  - (l) A corporation and a limited liability company if the same persons own:
    - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
    - 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
  - (m) A partnership or limited partnership and a limited liability company if the same persons own:
    - 1. More than fifty percent (50%) of the capital interest or profits in the partnership or limited partnership; and
    - 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
  - (n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or
  - (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended;
- (3) "Approved company" means any eligible company for which the authority has granted final approval of its application pursuant to KRS 154.48-025;
- (4) "Approved costs" means one hundred percent (100%) of the eligible skills upgrade training costs and up to twenty-five percent (25%) of the eligible equipment costs approved by the authority that an approved company may recover through the inducements authorized by KRS 154.48-010 to 154.48-035;
- (5) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;
- (6) "Average hourly wage" means the wage and employment data published by the Office of Employment and Training in the Department of Workforce Investment within the Education *and Workforce Development* Cabinet collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:
- (a) Manufacturing;
  - (b) Transportation, communications, and public utilities;
  - (c) Wholesale and retail trade;
  - (d) Finance, insurance, and real estate; and
  - (e) Services;
- (7) "Commonwealth" means the Commonwealth of Kentucky;

- (8) "Eligible company" means any entity that undertakes an environmental stewardship project;
- (9) "Eligible costs" means eligible equipment costs plus eligible skills upgrade training costs expended after preliminary approval of the environmental stewardship project;
- (10) "Eligible equipment costs" means:
- (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of an environmental stewardship project;
  - (b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, equipping, and installation of an environmental stewardship project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;
  - (c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, equipping, and installation of an environmental stewardship project;
  - (d) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of an environmental stewardship project;
  - (e) All costs paid for by the approved company that are required for the installation of utilities, including but not limited to water, sewer, sewer treatment, gas, electricity, communications, and access to transportation, and including off-site construction of the facilities necessary for implementation of an environmental stewardship project; and
  - (f) All other costs of a nature comparable to those described in this subsection.
- (11) "Eligible skills upgrade training costs" means:
- (a) Fees or salaries required to be paid to instructors who are employees of the approved company, instructors who are full-time, part-time, or adjunct instructors with an educational institution, and instructors who are consultants on contract with an approved company in connection with an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
  - (b) Administrative fees charged by educational institutions in connection with an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
  - (c) The cost of supplies, materials, and equipment used exclusively in an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
  - (d) The cost of leasing a training facility where space is unavailable at an educational institution or at the premises of an approved company in connection with an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
  - (e) Employee wages to be paid in connection with an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
  - (f) Travel expenses paid by the approved company as incurred by its full-time employees resulting directly from the costs of transportation, lodging and meals that are directly related to an occupational training program necessary for the implementation of an environmental stewardship project; and
  - (g) All other costs of a nature comparable to those described in this subsection;
- (12) "Employee benefits" means nonmandated costs paid by an eligible company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k) or similar plans;
- (13) "Environmental stewardship product" means any new manufactured product or substantially improved existing manufactured product that has a lesser or reduced adverse effect on human health and the environment or

provides for improvement to human health and the environment when compared with existing products or competing products that serve the same purpose. Such products may include but are not limited to those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics disposed or consumed, but shall not include products that are the result of the production of energy or energy producing fuels;

- (14) "Environmental stewardship project" or "project" means:
- (a) The acquisition, construction, and installation of new equipment and, with respect thereto:
    1. The construction, rehabilitation, and installation of improvements to facilities necessary to house the new equipment, including surveys;
    2. Installation of utilities including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities;
    3. Off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located;

All of which are utilized by an approved company or its affiliate to manufacture an environmental stewardship product as reviewed and recommended to the authority by the Environmental and Public Protection Cabinet; and
  - (b) The provision of an occupational training program to provide the employees of an approved company or its affiliate with the knowledge and skills necessary to manufacture the new product;
- (15) "Final approval" means the action taken by the authority designating an eligible company that has previously received a preliminary approval as an approved company and authorizing the execution of an environmental stewardship agreement between the authority and the approved company;
- (16) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state income tax imposed by KRS 141.020;
- (17) "Inducement" means the Kentucky tax credit as authorized by KRS 154.48-010 to 154.48-035;
- (18) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing that results in a change in the condition of the property and any related activity or function, together with the storage, warehousing, distribution, and related office facilities;
- (19) "Preliminary approval" means the action taken by the authority designating an eligible company as a preliminarily approved company, and conditioning final approval by the authority upon satisfaction by the eligible company of the requirements set forth in the preliminary approval;
- (20) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and
- (21) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401.

➔Section 46. KRS 157.910 is amended to read as follows:

- (1) There is hereby established the Kentucky Environmental Education Council, referred to hereafter as the council, to provide leadership and planning for environmental education for the population of Kentucky through the cooperative efforts of educators, government agencies, businesses, and public interests. The council shall be an independent agency and be attached to the Education *and Workforce Development* Cabinet for administrative purposes.
- (2) The nine (9) member council shall be appointed to four (4) year terms by the Governor and be composed of a balance of education, government, industry, and environmental interests. Members appointed by the Governor shall have the authority to carry out the provisions of KRS 157.900 to 157.915.
- (3) The council shall hire an executive director, environmental education specialists, and clerical staff to carry out the functions and duties of the council.
- (4) The council members shall receive no compensation, but shall be reimbursed for actual expenses incurred in accordance with state procedures and policies.
- (5) The council membership shall elect a chairperson to serve a one (1) year term.

➔Section 47. KRS 157.921 is amended to read as follows:

- (1) The Kentucky Geographic Education Board is established to provide leadership and planning for geography education for the population of Kentucky through the efforts of elementary, secondary, and postsecondary educators, government agencies, and public interests. The board shall be an independent agency and be attached to the Education *and Workforce Development* Cabinet for administrative purposes.
- (2) The twelve (12) member board shall be appointed to two (2) year terms, initially appointed by the Governor, and composed of the following members:
  - (a) Three (3) representatives from postsecondary institutions;
  - (b) One (1) representative from the Council for Social Sciences;
  - (c) Six (6) representatives from elementary and secondary schools;
  - (d) One (1) representative of the Department of Education; and
  - (e) One (1) representative of the Council on Postsecondary Education.
- (3) The board shall select from its membership a chair and establish bylaws, including bylaws governing board membership and length of terms. Upon expiration of the initial appointments and adoption of bylaws governing membership and length of terms by the board, the board shall be self-perpetuating, and the appointment and length of terms shall be made in accordance with the board's bylaws. Vacancies that occur before the expiration of the initial appointments shall be filled by the Governor for the remaining term of the vacancy.
- (4) The board members shall receive no compensation but shall be reimbursed for actual expenses incurred in accordance with state procedures and policies.

➔Section 48. KRS 158.442 is amended to read as follows:

- (1) The General Assembly hereby authorizes the establishment of the Center for School Safety. The center's mission shall be to serve as the central point for data analysis; research; dissemination of information about successful school safety programs, research results, and new programs; and, in collaboration with the Department of Education and others, to provide technical assistance for safe schools.
- (2) To fulfill its mission, the Center for School Safety shall:
  - (a) Establish a clearinghouse for information and materials concerning school violence prevention;
  - (b) Provide program development and implementation expertise and technical support to schools, law enforcement agencies, and communities, which may include coordinating training for administrators, teachers, students, parents, and other community representatives;
  - (c) Analyze the data collected in compliance with KRS 158.444;
  - (d) Research and evaluate school safety programs so schools and communities are better able to address their specific needs;
  - (e) Administer a school safety grant program for local districts as directed by the General Assembly;
  - (f) Promote the formation of interagency efforts to address discipline and safety issues within communities throughout the state in collaboration with other postsecondary education institutions and with local juvenile delinquency prevention councils;
  - (g) Prepare and disseminate information regarding best practices in creating safe and effective schools;
  - (h) Advise the Kentucky Board of Education on administrative policies and administrative regulations; and
  - (i) Provide an annual report by July 1 of each year to the Governor, the Kentucky Board of Education, and the Interim Joint Committee on Education regarding the status of school safety in Kentucky.
- (3) The Center for School Safety shall be governed by a board of directors appointed by the Governor. Members shall consist of:
  - (a) The commissioner or a designee of the Department of Education;
  - (b) The commissioner or a designee of the Department of Juvenile Justice;
  - (c) The commissioner or a designee of the Department for Mental Health and Mental Retardation Services;

- (d) The commissioner or a designee of the Department for Community Based Services;
- (e) The secretary or a designee of the Education *and Workforce Development* Cabinet;
- (f) A juvenile court judge;
- (g) A local school district board of education member;
- (h) A local school administrator;
- (i) A school council parent representative;
- (j) A teacher;
- (k) A classified school employee; and
- (l) A superintendent of schools who is a member of the Kentucky Association of School Administrators.

In appointing the board of education member, the school administrator, the school superintendent, the school council parent member, the teacher, and the classified employee, the Governor shall solicit recommendations from the following groups respectively: the Kentucky School Boards Association, the Kentucky Association of School Administrators, the Kentucky Association of School Councils, the Kentucky Education Association, and the Kentucky Education Support Personnel Association. The initial board shall be appointed by July 15, 1998. The board shall hold its first meeting no later than thirty (30) days after the appointment of the members.

➔Section 49. KRS 158.443 is amended to read as follows:

- (1) Each nonstate-government employee member of the board of directors for the Center for School Safety shall serve a term of two (2) years and may be reappointed, but a member shall not serve more than two (2) consecutive terms.
- (2) The members who are nonstate-government employees shall be reimbursed for travel, meals, and lodging and expenses relating to official duties of the board from funds appropriated for this purpose.
- (3) The board of directors shall meet a minimum of four (4) times per year. The board of directors shall be attached to the Office of the Secretary of the Education *and Workforce Development* Cabinet for administrative purposes.
- (4) The board of directors shall annually elect a chair and vice chair from the membership. The board may form committees as needed.
- (5) Using a request-for-proposal process, the board of directors shall select a public university to administer the Center for School Safety for a period of not less than four (4) years unless funds for the center are not appropriated or the board determines that the university is negligent in carrying out its duties as specified in the request for proposal and contract. The initial request for proposals shall be issued not later than September 15, 1998. The board shall select a university no later than January 1, 1999. The university shall be the fiscal agent for the center and:
  - (a) Receive funds based on the approved budget by the board of directors and the General Assembly's appropriation for the center. The center shall operate within the fiscal policies of the university and in compliance with policies established by the board of directors per the request for proposal and contract; and
  - (b) Employ the staff of the center who shall have the retirement and employee benefits granted other similar university employees.
- (6) The board of directors shall annually approve:
  - (a) A work plan for the center;
  - (b) A budget for the center;
  - (c) Operating policies as needed; and
  - (d) Recommendations for grants, beginning in the 1999-2000 school year and subsequent years, to local school districts and schools to assist in the development of programs and individualized approaches to work with violent, disruptive, or academically at-risk students, and consistent with provisions of KRS 158.445.

- (7) The board of directors shall prepare a biennial budget request to support the Center for School Safety and to provide program funds for local school district grants.
- (8) The board shall develop model interagency agreements between local school districts and other local public agencies, including, among others, health departments, departments of social services, mental health agencies, and courts, in order to provide cooperative services and sharing of costs for services to students who are at risk of school failure, are at risk of participation in juvenile crime, or have been expelled from the school district.

➔Section 50. KRS 158.792 is amended to read as follows:

- (1) As used in this section and KRS 164.0207, unless the context requires otherwise:
  - (a) "Comprehensive reading program" means a program that emphasizes the essential components of reading: phonemic awareness, phonics, fluency, vocabulary, comprehension, and connections between writing and reading acquisition and motivation to read.
  - (b) "Reading diagnostic assessment" means an assessment that identifies a struggling reader and measures the reader's skills against established performance levels in the essential components of reading. The purpose is to screen for areas that require intervention in order for the student to learn to read proficiently.
  - (c) "Reading intervention program" means short-term intensive instruction in the essential skills necessary to read proficiently that is provided to a student by a highly trained teacher. This instruction may be conducted one-on-one or in small groups; shall be research-based, reliable, and replicable; and shall be based on the ongoing assessment of individual student needs.
  - (d) "Reliable, replicable research" means objective, valid, scientific studies that:
    - 1. Include rigorously defined samples of subjects that are sufficiently large and representative to support the general conclusions drawn;
    - 2. Rely on measurements that meet established standards of reliability and validity;
    - 3. Test competing theories, where multiple theories exist;
    - 4. Are subjected to peer review before their results are published; and
    - 5. Discover effective strategies for improving reading skills.
- (2) The reading diagnostic and intervention fund is created to help teachers and library media specialists improve the reading skills of struggling readers in the primary program. The Department of Education, upon the recommendation of the Reading Diagnostic and Intervention Grant Steering Committee, shall provide renewable, two (2) year grants to schools to support teachers in the implementation of reliable, replicable research-based reading intervention programs that use a balance of diagnostic tools and instructional strategies that emphasize phonemic awareness, phonics, fluency, vocabulary, comprehension, and connections between writing and reading acquisition and motivation to read to address the diverse learning needs of those students reading at low levels. Any moneys in the fund at the close of the fiscal year shall not lapse but shall be carried forward to be used for the purposes specified in this section.
- (3) (a) The Kentucky Board of Education shall promulgate administrative regulations, based on recommendations from the secretary of the Education *and Workforce Development* Cabinet, the Reading Diagnostic and Intervention Grant Steering Committee established in KRS 158.794, and the Collaborative Center for Literacy Development established in KRS 164.0207 to:
  - 1. Identify eligible grant applicants, taking into consideration how the grant program described in this section will relate to other grant programs;
  - 2. Specify the criteria for acceptable diagnostic assessments and intervention programs;
  - 3. Specify the criteria for acceptable ongoing assessment of each child to determine his or her reading progress;
  - 4. Establish the minimum evaluation process for an annual review of each grant recipient's program and progress;
  - 5. Identify the annual data that must be provided from grant recipients;

6. Define the application review and approval process;
  7. Establish matching requirements deemed necessary;
  8. Define the professional development and continuing education requirements for teachers, library media specialists, administrators, and staff of grant recipients;
  9. Establish the conditions for renewal of a two (2) year grant; and
  10. Specify other conditions necessary to implement the purposes of this section.
- (b) The board shall require that a grant applicant provide assurances that the following principles will be met if the applicant's request for funding is approved:
1. A research-based comprehensive schoolwide reading program will be available;
  2. Intervention services will supplement, not replace, regular classroom instruction;
  3. Intervention services will be provided to struggling primary program readers within the school based upon ongoing assessment of their needs; and
  4. A system for informing parents of struggling readers of the available family literacy services within the district will be established.
- (4) In order to qualify for funding, the school council, or if none exists, the principal or the superintendent of schools, shall allocate matching funds required by grant recipients under subsection (3) of this section. Funding for professional development allocated to the school council under KRS 160.345 and for continuing education under KRS 158.070 may be used as part of the school's match.
- (5) The Department of Education shall make available to schools:
- (a) Information concerning successful, research-based comprehensive reading programs, diagnostic tools for pre- and post-assessment, and intervention programs, from the Collaborative Center for Literacy Development created under KRS 164.0207;
  - (b) Strategies for successfully implementing early reading programs, including professional development support and the identification of funding sources; and
  - (c) A list of professional development providers offering teacher training related to reading that emphasizes the essential components for successful reading: phonemic awareness, phonics, fluency, vocabulary, comprehension, and connections between writing and reading acquisition and motivation to read.
- (6) The Department of Education shall submit a report to the Interim Joint Committee on Education no later than September 1 of each year outlining the use of grant funds. The report shall also include comparisons of the overall costs and effectiveness of intervention programs. The annual report for an odd-numbered year shall include an estimate of the cost to expand the reading diagnostic and intervention grant program.

➔Section 51. KRS 158.842 is amended to read as follows:

- (1) As used in KRS 158.840 to 158.844, unless the context requires otherwise:
- (a) "Concepts" means mathematical ideas that serve as the basis for understanding mathematics;
  - (b) "Mathematics" means the curriculum of numbers and computations, geometry and measurements, probability and statistics, and algebraic ideas;
  - (c) "Mathematics coach" means a mathematics leader whose primary responsibility is to provide ongoing support for one (1) or more mathematics teachers. The role of the coach is to improve mathematics teaching practices by working with teachers in their classrooms, observing and providing feedback to them, modeling appropriate teaching practices, conducting workshops or institutes, establishing learning communities, and gathering appropriate and useful resources;
  - (d) "Mathematics diagnostic assessment" means an assessment that identifies a student at risk of failure in mathematics or a student with major deficits in numeracy and other mathematical concepts and skills;
  - (e) "Mathematics intervention program" means an intensive instructional program that is based on valid research and is provided by a highly trained teacher to specifically meet individual students needs;
  - (f) "Mathematics leader" means any educator with a specialization in mathematics who:

1. Serves in a supervisory capacity, such as mathematics department chair, school-based mathematics specialist, or district mathematics supervisor or coordinator; or
  2. Regularly conducts or facilitates teacher professional development, such as higher education faculty or other mathematics teachers;
- (g) "Mathematics mentor" means an experienced mathematics coach who typically works with beginning or novice teachers only. The responsibilities and roles of the mentor are the same as those of the coach;
- (h) "Numeracy" means the development of the basic concepts which include counting, place value, addition and subtraction strategies, multiplication and division strategies, and the concepts of time, money, and length. To be numerate is to have and be able to use appropriate mathematical knowledge, concepts, skills, intuition, and experience in relationship to every day life;
- (i) "Relationships" means connections of mathematical concepts and skills within mathematics; and
- (j) "Skills" means actions of mathematics.
- (2) The Committee for Mathematics Achievement is hereby created for the purposes of developing a multifaceted strategic plan to improve student achievement in mathematics at all levels of schooling, prekindergarten through postsecondary and adult. At a minimum the plan shall address:
- (a) Challenging curriculum that is aligned prekindergarten through postsecondary, including consensus among high school teachers and postsecondary education faculty about expectations, curriculum, and assessment;
  - (b) Attitudes and beliefs of teachers about mathematics;
  - (c) Teachers' knowledge of mathematics;
  - (d) Diagnostic assessment, intervention services, and instructional strategies;
  - (e) Shortages of teachers of mathematics, including incentives to attract strong candidates to mathematics teaching;
  - (f) Statewide institutes that prepare cadres of mathematics leaders in local school districts, which may include highly skilled retired mathematics teachers, to serve as coaches and mentors in districts and schools;
  - (g) Cohesive continuing education options for experienced mathematics classroom teachers;
  - (h) Closing the student achievement gap among various student subpopulations;
  - (i) Curriculum expectations and assessments of students among the various school levels, prekindergarten, primary, elementary, middle, and high school;
  - (j) Content standards for adult education centers providing mathematics curricula;
  - (k) Introductory postsecondary education mathematics courses that are appropriate to the wide array of academic programs and majors;
  - (l) Research to analyze further the issues of transition from high school or GED programs to postsecondary education mathematics; and
  - (m) The early mathematics testing program under KRS 158.803.

Other factors may be included in the strategic plan as deemed appropriate by the committee to improve mathematics achievement of Kentucky students.

- (3) In carrying out its responsibility under subsection (2)(f) of this section, the committee shall:
- (a) Design a statewide professional development program that includes summer mathematics institutes at colleges and universities, follow-up, and school-based support services, beginning no later than June 1, 2006, to prepare teams of teachers as coaches and mentors of mathematics at all school levels to improve student achievement. Teachers shall receive training in diagnostic assessment and intervention. The statewide initiative shall be funded, based on available funds, from the Teachers' Professional Growth Fund described in KRS 156.553. The design shall:

1. Define the curricula focus;
  2. Build on the expertise of specific colleges and universities;
  3. Place emphasis on mathematics concepts, skills and relationships, diagnostic assessment, intervention services, and instructional strategies;
  4. Identify quality control measures for the delivery of each institute;
  5. Establish evaluation procedures for the summer institutes and the other professional development components;
  6. Provide updates and networking opportunities for coaches and mentors throughout the school year; and
  7. Define other components within the initiative that are necessary to meet the goal of increasing student achievement in mathematics;
- (b) Require schools and districts approved to have participants in the mathematics leader institutes to provide assurances that:
1. The district and schools have, or will develop, local mathematics curricula and assessments that align with state standards for mathematics;
  2. There is a local commitment to build a cadre of mathematics leaders within the district;
  3. The district and participating schools will provide in-school support for coaching and mentoring activities;
  4. The mathematics teachers are willing to develop classroom assessments that align with state assessments; and
  5. Students who need modified instructional and intervention services will have opportunity for continuing education services beyond the regular school day, week, or year; and
- (c) In addition to the conditions specified in paragraph (b) of this subsection, the committee shall make recommendations to the Kentucky Department of Education and the Kentucky Board of Education for criteria to be included in administrative regulations promulgated by the board which define:
1. Eligible grant recipients, taking into consideration how this program relates to other funded mathematics initiatives;
  2. The application process and review;
  3. The responsibilities of schools and districts, including but not limited to matching funds requirements, released or extended time for coaches and mentors during the school year, continuing education requirements for teachers and administrators in participating schools, data to be collected, and local evaluation requirements; and
  4. Other recommendations requested by the Kentucky Department of Education.
- (4) The committee shall initially be composed of twenty-five (25) members as follows:
- (a) The commissioner of education or his or her designee;
  - (b) The president of the Council on Postsecondary Education or his or her designee;
  - (c) The president of the Association of Independent Kentucky Colleges and Universities or his or her designee;
  - (d) The executive director of the Education Professional Standards Board or his or her designee;
  - (e) The secretary of the Education *and Workforce Development* Cabinet or his or her designee;
  - (f) A representative with a specialty in mathematics or mathematics education who has expertise and experience in professional development, especially with coaching and mentoring of teachers, from each of the nine (9) public postsecondary education institutions defined in KRS 164.001. The representatives shall be selected by mutual agreement of the president of the Council on Postsecondary Education and the commissioner of education;

- (g) Two (2) adult education instructors selected by the vice president for Kentucky Adult Education;
- (h) Two (2) elementary, two (2) middle, and two (2) high school mathematics teachers, appointed by the board of the statewide professional education association having the largest paid membership with approval from their respective local principals and superintendents of schools; and
- (i) Three (3) school administrators, with one (1) each representing elementary, middle, and high school, appointed by the board of the statewide administrators' association having the largest paid membership with approval from their respective local superintendents of schools.

When the Center for Mathematics created under KRS 164.525 becomes operational, the executive director of the center shall be added to the committee, which shall then be composed of twenty-six (26) members. Appointments to the committee shall be made no later than thirty (30) days following March 18, 2005, and the first meeting of the committee shall occur no later than thirty (30) days following appointment of the members.

- (5) A majority of the full membership shall constitute a quorum.
- (6) Each member of the committee, other than members who serve by virtue of their positions, shall serve for a term of three (3) years or until a successor is appointed and qualified, except that the initial appointments shall be made in the following manner: six (6) members shall serve a one (1) year term, six (6) members shall serve a two (2) year term, and eight (8) members shall serve a three (3) year term.
- (7) A temporary chair of the committee shall be appointed prior to the first meeting of the committee through consensus of the president of the Council on Postsecondary Education and the commissioner of education, to serve ninety (90) days after his or her appointment. Prior to the end of the ninety (90) days, the committee shall elect a chair by majority vote. The temporary chair may be a nominee for the chair by majority vote. Thereafter, a chair shall be elected each calendar year. An individual may not serve as chair for more than three (3) consecutive years. The chair shall be the presiding officer of the committee, and coordinate the functions and activities of the committee.
- (8) The committee shall be attached to the Kentucky Department of Education for administrative purposes. The commissioner of education may contract with a mathematics-trained professional to provide part-time staff support to the committee. The commissioner of education and the president of the council shall reach consensus in the selection of a person to fill the position. The person selected shall have a graduate degree, a mathematics major, and teaching or administrative experience in elementary and secondary education. The person shall not be a current employee of any entity represented on the committee. The department shall provide office space and other resources necessary to support the staff position and the work of the committee.
- (9) The committee, under the leadership of the chair, may organize itself into appropriate subcommittees and work structures to accomplish the purposes of the committee.
- (10) Members of the committee shall serve without compensation but shall be reimbursed for necessary travel and expenses while attending meetings at the same per diem rate promulgated in administrative regulation for state employees under provisions of KRS Chapter 45. Funds shall be provided school districts to cover the cost of substitute teachers for those teachers on the committee at each district's established rate for substitute teachers.
- (11) If a vacancy occurs within the committee during its duration, the board of the statewide professional education association having the largest paid membership or the board of the statewide administrators association having the largest paid membership or the president of the Council on Postsecondary Education, as appropriate, shall appoint a person to fill the vacancy.
- (12) The committee shall:
  - (a) Present a draft strategic plan addressing the requirements in subsection (1) of this section and other issues that arose during the work of the committee to the Education Assessment and Accountability Review Subcommittee no later than August 2005;
  - (b) Present the strategic plan for improving mathematics achievement to the Interim Joint Committee on Education by July 15, 2006, which shall include any recommendations that require legislative action; and
  - (c) Provide a final written report of committee activities to the Interim Joint Committee on Education and the Legislative Research Commission by December 1, 2006.

- (13) The committee shall have ongoing responsibility for providing advice and guidance to policymakers in the development of statewide policies and in the identification and allocation of resources to improve mathematics achievement. In carrying out this responsibility, the committee shall periodically review the strategic plan and make modifications as deemed appropriate and report those to the Interim Joint Committee on Education.
- (14) The committee shall collaborate with the Center for Mathematics to ensure that there is ongoing identification of research-based intervention programs for K-12 students who have fallen behind in mathematics, rigorous mathematics curricula that prepare students for the next level of schooling, research-based professional development models that prepare teachers in mathematics and pedagogy, and strategies for closing the gap between high school or GED and postsecondary mathematics preparation.

➔Section 52. KRS 158.844 is amended to read as follows:

- (1) The mathematics achievement fund is hereby created to provide developmentally appropriate diagnostic assessment and intervention services to students, primary through grade 12, to help them reach proficiency in mathematics on the state assessments under KRS 158.6453 and in compliance with the "No Child Left Behind Act of 2001," 20 U.S.C. sec. 6301 et seq. as required under KRS 158.840.
- (2) The grant funds may be used to support the implementation of diagnostic and intervention services in mathematics. The use of funds may include: pay for extended time for teachers, released time for teachers to serve as coaches and mentors or to carry out other responsibilities needed in the implementation of intervention services, payment of substitute teachers needed for the support of mathematics teachers, purchase of materials needed for modification of instruction, and other costs associated with diagnostic and intervention services or to cover other costs deemed appropriate by the Kentucky Board of Education.
- (3) The fund shall:
- (a) Provide funding for the Center for Mathematics created in KRS 164.525 and the costs of training selected teachers in the diagnostic assessment and intervention skills that are needed to assist struggling students in the primary program and other grade levels;
  - (b) Provide renewable, two (2) year local grants to school districts and for purposes described in subsection (2) of this section; and
  - (c) Provide operational funding for the Committee for Mathematics Achievement created in KRS 158.842.
- (4) Any funds appropriated to the mathematics achievement fund that are specifically designated by the General Assembly to support the Center for Mathematics shall be appropriated to the Council on Postsecondary Education and distributed to the university administering the center, as determined by the council under KRS 164.525.
- (5) Any moneys in the fund at the close of a fiscal year shall not lapse but shall be carried forward to be used for the purposes specified in this section.
- (6) Any interest earnings of the fund shall become a part of the fund and shall not lapse.
- (7) (a) Any funds appropriated to the mathematics achievement fund and specifically designated by the General Assembly as funding for grants to local school districts or to support the Committee for Mathematics Achievement shall be administered by the Kentucky Department of Education.
- (b) The Kentucky Board of Education shall promulgate administrative regulations relating to the grants for local school districts based on recommendations from the Committee for Mathematics Achievement, the secretary of the Education *and Workforce Development* Cabinet, the commissioner of education, and the Center for Mathematics established in KRS 164.525. The administrative regulations shall:
1. Identify eligibility criteria for grant applicants;
  2. Specify the criteria for acceptable diagnostic assessments and intervention programs and coaching and mentoring programs;
  3. Establish the minimum annual evaluation process for each grant recipient;
  4. Identify the annual data that must be provided from each grant recipient;
  5. Define the application and approval process;
  6. Establish matching fund requirements if deemed necessary by the board;

7. Define the obligations for professional development and continuing education for teachers, administrators, and staff of each grant recipient;
  8. Establish the conditions for renewal of a two (2) year grant; and
  9. Specify other conditions necessary to implement the purposes of this section.
- (c) As part of the application process, the board shall require that a grant applicant provide assurances that the following principles will be met if the applicant's request for funding is approved:
1. Mathematics instruction will be standards-based and utilize research-based practices;
  2. Intervention and support services will supplement, not replace, regular classroom instruction; and
  3. Intervention services will be provided to primary program students and other students who are at risk of mathematics failure within the school based upon ongoing assessments of their needs.
- (d) If matching funds are required, the school council or, if none exists, the principal or the superintendent of schools, shall allocate matching funds. Funding for professional development allocated to the school council under KRS 160.345 and for continuing education under KRS 158.070 may be used to provide a portion or all of a school's required match.
- (e) The Department of Education shall make available to schools:
1. Information from the Center for Mathematics regarding diagnostic assessment and intervention programs and coaching and mentoring programs of proven-practice in meeting the needs of primary students and other students who are at risk of failure;
  2. Technical assistance to potential applicants and grant recipients;
  3. A list of professional development providers offering teacher training in diagnostic assessment and intervention strategies and coaching and mentoring; and
  4. Information from the Center for Mathematics on how to communicate to parents effective ways of interacting with their children to improve their mathematics concepts, skills, and understanding.
- (f) The Department of Education shall submit a report to the Interim Joint Committee on Education no later than September 1 of each year outlining the use of grant funds. By November 1, 2007, the Department of Education with input from the Committee for Mathematics Achievement and the Center for Mathematics shall conduct a statewide needs assessment of the resources needed in each school to help each child achieve proficiency in mathematics by the year 2014 and report to the Interim Joint Committee on Education an estimate of the cost and a specific timeline for meeting the goal established by the Commonwealth.

➔Section 53. KRS 163.470 is amended to read as follows:

- (1) There is created within the Education *and Workforce Development* Cabinet the Office for the Blind.
- (2) The executive director shall be appointed by the secretary of the Education *and Workforce Development* Cabinet pursuant to KRS 12.050.
- (3) The office shall be the state agency responsible for all rehabilitation services for the blind and the visually impaired and other services as deemed necessary. The office shall be the agency authorized to expend all state and federal funds designated for rehabilitation services for the blind and visually impaired. The Office of the Secretary of the Education *and Workforce Development* Cabinet is authorized as the state agency to receive all state and federal funds and gifts and bequests for the benefit of rehabilitation services for the blind and visually impaired. The State Treasurer is designated as the custodian of all funds and shall make disbursements for rehabilitation purposes upon certification by the executive director.
- (4) (a) The Kentucky Office for the Blind State Rehabilitation Council is hereby created and established to accomplish the purposes and functions enumerated in the Rehabilitation Act of 1973, as amended. Members of the council shall be appointed by the Governor from recommendations submitted by the Office for the Blind consistent with the federal mandate to include a majority of individuals who are blind or visually impaired representing specified organizations, service providers, and advocacy groups.

The composition, qualifications, and terms of service of the council shall conform to those prescribed by the federal law. There shall be statewide representation on the council.

- (b) 1. Except as provided in subparagraph 2. of this paragraph, any vacancy occurring in the membership of the Office for the Blind State Rehabilitation Council shall be filled in the same manner as the original appointment. The vacancy shall not affect the power of the remaining members of the council.
  2. The Governor may delegate the authority to fill a vacancy to the remaining voting members of the council.
  - (c) Each member of the Office for the Blind State Rehabilitation Council may receive a per diem of one hundred dollars (\$100), not to exceed six hundred dollars (\$600) annually, for each regular or special meeting attended if the member is not employed or must forfeit wages from other employment. Each member may have travel expenses approved at the established state rate and expenses reimbursed at the established state agency rate for services such as personal assistance, child care, and drivers for attendance at council meetings, and in the performance of duties authorized by the Kentucky Office for the Blind State Rehabilitation Council. The per diem and expenses shall be paid out of the federal funds appropriated under the Rehabilitation Act of 1973, as amended.
- (5) The office shall establish and implement policies and procedures for the carrying out of the program of services for the blind.
  - (6) At the close of each biennium, the office shall prepare a financial report and present it to the secretary of the Education *and Workforce Development* Cabinet and to the Governor. The biennial report shall be published. The biennial report shall also contain a precise review of the work of the office and contain necessary suggestions for improvement.
  - (7) The office shall coordinate its functions with other appropriate public and private agencies.
  - (8) The office shall perform all other duties as required of it by law.
  - (9) The executive director shall hire personnel as necessary to carry out the work of the office and the provisions of KRS 163.450 to 163.470. Preference shall be given to hiring qualified blind persons.
  - (10) There shall be created under the authority of the office, to be directed by a director appointed by the secretary of the Education *and Workforce Development* Cabinet pursuant to KRS 12.050, a Division of Consumer Services which shall provide intake and rehabilitation counseling services; distribute or sell technical educational and other aids to the blind; provide educational materials such as recorded texts, braille or large-type texts, or such other materials as may be deemed necessary for the education of the blind; research into the development of new technical aids for the blind, mobility training, work evaluation, personal adjustment, independent living, and other services as needed for blind adults, and services for the blind who have other disabilities; and promote employment of the blind in public and private sectors.
  - (11) There shall be established under the authority of the office, to be directed by a director appointed by the secretary pursuant to KRS 12.050, the Division of Kentucky Business Enterprise. This division shall manage and supervise the Vending Facilities Program and license qualified blind persons as vendors. In connection therewith, the office shall be authorized to own or lease vending equipment for the operation of vending facilities in federal, state, private, and other buildings. The set-aside charges levied shall comply with the existing federal regulations as specified in 34 CFR 395.9. One (1) or more facility placement agents shall be employed to locate and establish additional vending facilities. The Office for the Blind shall make such surveys as may be deemed necessary to determine the vending facility opportunities for blind vendors in state buildings or on other property owned, leased, or otherwise occupied by the state government and shall install vending facilities in suitable locations on such property for the use of the blind. All of the net income from vending machines which are on the same property as a vending facility shall be paid to the blind vendor of the vending facility. Whenever there exists a conflict of interest between state agencies seeking to vend merchandise on the same state property, the agencies shall negotiate a fair agreement which shall protect the interest of both from unreasonable competition. The agreement shall be submitted to the custodial authority having jurisdiction over the property for approval. Provided, however, that in all situations the blind vendor shall be permitted to vend all items of merchandise customarily sold at similar vending facilities.

- (12) The Office for the Blind, at all times, shall be authorized to provide industrial evaluation, training, and employment. The office shall provide staff services which shall include staff development and training, program development and evaluation, and other staff services as may be deemed necessary.
- (13) The provisions of any other statute notwithstanding, the executive director is authorized to use receipt of funds from the Social Security reimbursement program for a direct service delivery staff incentive program. Incentives may be awarded if case service costs are reimbursed for job placement of Social Security or Supplemental Security Income recipients at the Substantial Gainful Activity (SGA) level for nine (9) months pursuant to 42 U.S.C. sec. 422 and under those conditions and criteria as are established by the federal reimbursement program.

➔Section 54. KRS 163.506 is amended to read as follows:

- (1) The Commission on the Deaf and Hard of Hearing shall consist of:
- (a) Seven (7) members appointed by the Governor as follows:
1. One (1) audiologist chosen from a list of three (3) names submitted by the Kentucky Speech and Hearing Association;
  2. Three (3) hard of hearing or deaf persons chosen from a list of six (6) names submitted by the Kentucky Association of the Deaf;
  3. One (1) deaf or hard of hearing person chosen from a list of three (3) names submitted by the Kentucky Chapter of the Alexander Graham Bell Association for the Deaf, the initial appointment to be for a one (1) year term;
  4. One (1) hard of hearing or deaf person chosen from a list of three (3) names submitted by the Kentucky members of Self Help for Hard of Hearing People, the initial appointment to be for a two (2) year term; and
  5. One (1) deaf, late-deafened, or hard of hearing person chosen from a list of three (3) names submitted by the American Association of Retired Persons, the initial appointment to be for a two (2) year term;
- (b) One (1) representative of the Cabinet for Health and Family Services appointed by the secretary;
- (c) The secretary of the Education *and Workforce Development* Cabinet or his designee;
- (d) The president of the Kentucky Association for the Deaf or his designee;
- (e) The president of the Kentucky Registry of Interpreters for the Deaf or his designee; and
- (f) Three (3) persons appointed by the Commission on the Deaf and Hard of Hearing as constituted in subsections (1)(a) through (1)(e) of this section, appointed as follows:
1. One (1) parent of a hard of hearing or deaf child;
  2. One (1) representative of a public or private organization providing consistent services to the deaf and hard of hearing; and
  3. One (1) member at large.
- (2) All members shall serve three (3) year terms except state officials or their designees who shall serve during their terms of office. Of the members appointed pursuant to subsection (1)(a)2. through (1)(a)5. and subsection (1)(f) of this section, no more than three (3) of those members shall have terms beginning in the same year. Any person who is a member of the commission on July 13, 1990, shall serve until he resigns or until his term expires.
- (3) Each member of the commission shall be reimbursed for his necessary travel and other expenses actually incurred in the discharge of his duties.

➔Section 55. KRS 171.347 is amended to read as follows:

There is created the Commonwealth of Kentucky Abraham Lincoln Bicentennial Commission, which shall be attached to the Kentucky Historical Society for administrative purposes. The commission shall be composed of twenty (20) members, as follows:

- (1) Two (2) members of the House of Representatives, appointed by the Speaker of the House;
- (2) Two (2) members of the Senate, appointed by the President of the Senate;
- (3) The secretary of the Education *and Workforce Development* Cabinet, or his or her designee;
- (4) One (1) member from the Commerce Cabinet, appointed by the secretary of that cabinet;
- (5) One (1) member from the Kentucky Historical Society, appointed by the director of that agency;
- (6) One (1) member from the Kentucky Heritage Council, appointed by the executive director of that agency;
- (7) One (1) member from the Kentucky African-American Heritage Commission, appointed by the head of that agency;
- (8) One (1) member from the Kentucky Humanities Council, appointed by the executive director of that agency;
- (9) One (1) member from the Abraham Lincoln Bicentennial Commission established by the United States Congress, appointed by the concurrence of the chairs of that agency;
- (10) The Larue County judge/executive, or his or her designee;
- (11) One (1) member from the Abraham Lincoln Birthplace, appointed by the superintendent of that national historic site;
- (12) One (1) member from the Lincoln Museum in Hodgenville, appointed by the president of that agency;
- (13) One (1) member from the Mary Todd Lincoln House in Lexington, appointed by the head of that agency;
- (14) One (1) member from the Farmington Historic Home museum in Louisville, appointed by the head of that agency; and
- (15) Four (4) citizen members from the state at large with a demonstrated interest in history and substantial knowledge and appreciation of Abraham Lincoln, appointed by the Governor.

The chair of the commission shall be elected from among the membership by the commission members.

➔Section 56. KRS 171.420 is amended to read as follows:

- (1) The State Archives and Records Commission is hereby created and shall be a seventeen (17) member body constituted as follows:
  - (a) The state librarian or his designee, who shall be the chairman of the commission;
  - (b) The secretary of the Education *and Workforce Development* Cabinet or his designee;
  - (c) The Auditor of Public Accounts or his designee;
  - (d) The Chief Justice of the Supreme Court or his designee;
  - (e) The director of the Legislative Research Commission or his designee;
  - (f) The Attorney General or his designee;
  - (g) The director of the Office for Policy and Management in the Office of the Controller or his designee;
  - (h) The executive director of the Commonwealth Office of Technology or her or his designee;
  - (i) One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the University of Kentucky;
  - (j) One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Historical Society;
  - (k) One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Library Association;
  - (l) One (1) member appointed by the Governor from a list of seven (7) persons with one (1) name submitted by each of the presidents of the state universities and colleges;
  - (m) Four (4) citizens at large; and

- (n) One (1) member appointed by the Governor from a list of three (3) persons, with one (1) name submitted by each of the presidents of the Kentucky League of Cities, the Kentucky Association of Counties, and the Kentucky Association of School Administrators.
- (2) Vacancies shall be filled by the Governor in the same manner as initial appointments are made. All members shall serve for a term of four (4) years, provided that one (1) of the initial appointments shall be for a term of four (4) years, one (1) for three (3) years, one (1) for two (2) years, and one (1) for one (1) year.
- (3) The commission shall advise the Department for Libraries and Archives on matters relating to archives and records management. The commission shall have the authority to review and approve schedules for retention and destruction of records submitted by state and local agencies. In all cases, the commission shall determine questions which relate to destruction of public records, and their decision shall be binding on the parties concerned and final, except that the commission may reconsider or modify its actions upon the agreement of a simple majority of the membership present and voting.

➔Section 57. KRS 171.814 is amended to read as follows:

An Underground Railroad Advisory Council shall be established within the commission.

- (1) The council shall consist of thirteen (13) members, as follows:
  - (a) Secretary of the Education *and Workforce Development* Cabinet, or designee;
  - (b) Secretary of the Commerce Cabinet, or designee;
  - (c) Secretary of the Transportation Cabinet, or designee;
  - (d) Director of the Kentucky Historical Society, or designee;
  - (e) State historic preservation officer of the Kentucky Heritage Council, or designee;
  - (f) Chair of the commission or designee;
  - (g) Director of the Underground Railroad Institute at Georgetown College, or designee;
  - (h) Two (2) members of the General Assembly who hold an interest in the Underground Railroad, one (1) appointed by the President of the Senate and one (1) appointed by the Speaker of the House of Representatives;
  - (i) Two (2) at-large representatives who hold an interest in the protection, preservation, and promotion of the history of the Underground Railroad in Kentucky, appointed by the Governor;
  - (j) One (1) member of the board or staff of the National Underground Railroad Freedom Center who resides within a county of the Northern Kentucky Area Development District; and
  - (k) One (1) member of the board or staff of the National Underground Railroad Museum who resides within a county of the Buffalo Trace Area Development District.
- (2) The duties of the council shall be to:
  - (a) Advise and assist the commission with respect to issues and opportunities related to the Underground Railroad; and
  - (b) Annually review and make recommendations to the commission on the annual report and plan for future action.
- (3) Members of the council shall be appointed for four (4) year terms, except that initial appointments for the two (2) at-large members shall be made so that one (1) member is appointed for two (2) years, and one (1) member is appointed for three (3) years. Sitting members shall be eligible for reappointment.
- (4) The chair of the commission shall serve as chair of the council.
- (5) The council shall meet annually or more frequently at the request of the chair.
- (6) Six (6) members shall constitute a quorum for conducting business.
- (7) In the event of a vacancy, the appropriate appointing entity shall appoint a replacement member who shall hold office during the remainder of the term so vacated.

(8) Members of the council shall serve without compensation.

➔Section 58. KRS 173.810 is amended to read as follows:

- (1) The Kentucky State Advisory Council on Libraries is hereby created and shall be composed of twenty-one (21) members, appointed by the Governor for a term of four (4) years, except that of the twenty-one (21) members initially appointed, six (6) shall serve terms of four (4) years, five (5) shall serve terms of three (3) years, five (5) shall serve terms of two (2) years, and five (5) shall serve terms of one (1) year. The Governor of the Commonwealth of Kentucky shall appoint from this membership a chairman and co-chairman to serve for periods of two (2) years each. The council shall be attached to the Education *and Workforce Development* Cabinet for administrative purposes.
- (2) Of the twenty-one (21) members, four (4) shall represent public libraries, two (2) shall represent school libraries, two (2) shall represent college or university libraries, four (4) shall represent special and institutional libraries, two (2) shall represent library users with disabilities, and seven (7) members, at least one (1) of whom shall be representative of disadvantaged persons, shall represent library users.
- (3) Vacancies shall be filled by the Governor in the same manner as initial appointments are made.
- (4) Members of the Kentucky State Advisory Council on Libraries shall be compensated for actual and necessary expenses.
- (5) The council shall be the state advisory council on libraries for the purposes of advising the Kentucky Department for Libraries and Archives on federal and state library development issues.

➔Section 59. KRS 177.109 is amended to read as follows:

The Transportation and Tourism Interagency Committee shall have but not be limited to the following duties and responsibilities:

- (1) Review Kentucky's signage laws, administrative regulations, and policies implementing the federal "Manual on Uniform Traffic Control Devices" and submit any proposed revisions to the secretary of the Transportation Cabinet;
- (2) Seek public comment on Kentucky's signage laws, administrative regulations, and policies;
- (3) Advise the Transportation Cabinet on the scenic byways and highways program;
- (4) Review and make recommendations on requests for highway signage from tourism-related entities;
- (5) Coordinate development of the tourism information potential of welcome centers and rest areas through such means as interactive videos, information kiosks, and highway advisory radio transmitters, as well as other innovative methods which may be identified by the committee;
- (6) Monitor developments across the United States relating to billboards and official signs;
- (7) Report to the secretary of the Transportation Cabinet and to the secretary of the Commerce Cabinet on issues of mutual interest to the cabinets;
- (8) Serve as an advisory committee on issues identified by the secretary of the Transportation Cabinet and secretary of the Commerce Cabinet; and
- (9) Report committee recommendations to the secretary of the Transportation Cabinet, the secretary of the Commerce Cabinet, the secretary of the Education *and Workforce Development* Cabinet, and the secretary of the Executive Cabinet.

➔Section 60. KRS 194A.085 is amended to read as follows:

- (1) The Governor's Office of Wellness and Physical Activity is hereby established to implement a health, wellness, and fitness program for Kentucky and to promote a healthy lifestyle for all citizens of the Commonwealth. The office shall be headed by an executive director, who shall be appointed by the Governor in accordance with KRS 12.040 and shall serve at the pleasure of and under the direction of the Governor.
- (2) The office's duties, rights, and responsibilities shall include but not be limited to the following:
  - (a) Create a strategic plan to design Kentucky's wellness efforts;
  - (b) Implement and operate the Governor's Challenge Program;

- (c) Provide assistance to the Governor's Council on Wellness and Physical Activity in accomplishing its mission and charge;
  - (d) Identify and assess the most common challenges, existing resources, and services within the state and make recommendations to the Governor, state Legislature, or other governing bodies regarding the demand and effectiveness of present services and improvements that should be addressed;
  - (e) Develop, implement, and coordinate all physical activity and wellness related programs for residents of the Commonwealth;
  - (f) Develop a comprehensive statewide strategy that coordinates state and local efforts to promote wellness and physical activity;
  - (g) Coordinate the efforts of the Governor's Council on Wellness and Physical Activity with the efforts of the Education *and Workforce Development* Cabinet, the Cabinet for Health and Family Services, and the Personnel Cabinet;
  - (h) Design information campaigns to raise public awareness and promote citizen engagement regarding the critical nature of wellness in the state and to increase the will to make quality resources and services more widely available; and
  - (i) Promulgate any administrative regulations necessary to carry out the provisions of this chapter.
- (3) The executive director may, at the request of the Governor or any cabinet secretary, serve as a designee on boards, commissions, task forces, or other committees addressing issues relating to wellness and physical activity.
- (4) The Finance and Administration Cabinet, the Governor's Office for Policy and Management, the Education *and Workforce Development* Cabinet, and the Personnel Cabinet shall take all steps necessary to effectuate the provisions of this section.

➔Section 61. KRS 200.700 is amended to read as follows:

- (1) The Early Childhood Development Authority is established as a public agency and political subdivision of the Commonwealth with all powers, duties, and responsibilities conferred upon it by statute and essential to perform its functions including but not limited to employing other persons, consultants, attorneys, and agents. The authority shall be attached to the Department of Education for administrative purposes and shall establish necessary advisory councils. The authority shall have the ability to make expenditures from the early childhood development fund and shall ensure that expenditures made from the early childhood development fund are in conformance with its duties as established by the General Assembly.
- (2) The authority shall consist of the following sixteen (16) members:
- (a) The director of the Division of Early Childhood Development, who shall serve as chair;
  - (b) The secretary of the Education *and Workforce Development* Cabinet;
  - (c) The secretary of the Cabinet for Health and Family Services;
  - (d) One (1) nonvoting ex officio member from the House of Representatives who shall be appointed by and serve at the pleasure of the Speaker of the House;
  - (e) One (1) nonvoting ex officio member from the Senate who shall be appointed by and serve at the pleasure of the President of the Senate;
  - (f) Seven (7) private sector members knowledgeable about the health, education, and development of preschool children who shall be appointed by the Governor. At least one (1) private sector member shall be appointed from each congressional district;
  - (g) Three (3) citizens at large of the Commonwealth who shall be appointed by the Governor; and
  - (h) One (1) early childhood development advocate.
- (3) No later than thirty (30) days after July 14, 2000, the governing bodies of each of the following organizations shall recommend three (3) persons, at least one (1) of whom shall be male and at least one (1) of whom shall be female, as candidates for initial appointment by the Governor as private sector members to the authority:

- (a) The Kentucky AFL-CIO;
  - (b) The Kentucky Chamber of Commerce;
  - (c) The Kentucky League of Cities;
  - (d) The Kentucky Medical Association;
  - (e) The Louisville Urban League and Lexington Urban League;
  - (f) The Kentucky County Judge/Executives Association; and
  - (g) The Kentucky Council on Postsecondary Education.
- (4) The Governor shall select the private sector members of the authority by selecting one (1) nominee from each list of the three (3) nominees submitted to the Governor by each organization listed under subsection (3) of this section. The Governor shall fill a vacancy occurring before the expiration of the appointed term from the appropriate list of nominees. If there are no nominees remaining on the appropriate list, the Governor shall request a list of additional nominees from the appropriate organization.
- (5) (a) The initial terms of the private sector and citizen at-large members of the authority shall be for:
- 1. One (1) year for two (2) of the initial terms;
  - 2. Two (2) years for three (3) of the initial terms;
  - 3. Three (3) years for two (2) of the initial terms; and
  - 4. Four (4) years for four (4) of the initial appointments.
- (b) All succeeding appointments shall be for four (4) years from the expiration date of the preceding appointment.
- (c) Members shall serve until a successor has been appointed.
- (6) Private sector and citizen at-large members shall serve without compensation but shall be reimbursed for reasonable and necessary expenses.
- (7) In making appointments to the authority, the Governor shall assure broad geographical, ethnic, and gender diversity representation from the major sectors of Kentucky's early childhood development community. In filling vacancies, the Governor shall attempt to assure the continuing representation on the authority of broad constituencies of Kentucky's early childhood development community.
- (8) Upon the expiration of the term of any member, the governing body of the organization that made the original recommendation shall recommend three (3) persons, at least one (1) of whom shall be male and at least one (1) of whom shall be female, between sixty (60) and thirty (30) days before the expiration of the term of any authority member who is appointed as a result of a previous recommendation. The Governor shall, during March of the year that any organization is to recommend three (3) persons, request the organization to recommend three (3) persons for possible appointment to the authority. If there is no response, the Governor shall make the appointment from the population of the Commonwealth.
- (9) The authority shall meet at least quarterly and at other times upon call of the chair or a majority of the authority.
- (10) Members of the authority shall serve on a voluntary basis, receive a fixed per diem set by the authority, and be reimbursed for their expenses in accordance with state travel expense and reimbursement administrative regulations.

➔Section 62. KRS 200.703 is amended to read as follows:

- (1) The authority shall establish priorities for programs and the expenditure of funds that include but are not limited to the following:
- (a) Implementation of public health initiatives identified by the General Assembly;
  - (b) Provision of preconceptional and prenatal vitamins, with priority for folic acid for the prevention of neural tube defects;
  - (c) Voluntary immunization for children not covered by public or private health insurance;

- (d) Availability of high-quality, affordable early child-care and education options; and
  - (e) Increased public awareness of the importance of the early childhood years for the well-being of all Kentucky's citizens.
- (2) The authority shall develop a state plan on a biennial basis that identifies early childhood development funding priorities. Every two (2) years the authority shall review its priorities and make necessary adjustments to its state plan. The state plan shall incorporate priorities included in "KIDS NOW: Kentucky Invests in Developing Success, a Report from the Governor's Early Childhood Task Force, November 1999," and recommendations identified by the community early childhood councils. The authority shall file a report on the state plan with the Governor and the Legislative Research Commission by July 15 of odd-numbered years.
- (3) Programs funded by the authority shall be implemented by the appropriate agencies within the Cabinet for Health and Family Services, the Education *and Workforce Development* Cabinet, the Finance and Administration Cabinet, or other appropriate administrative agency.
- (4) The authority shall assure that a public hearing is held on the expenditure of funds. Advertisement of the public hearing shall be published at least once but may be published two (2) more times, if one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the scheduled date of the public hearing.
- (5) The authority shall promulgate administrative regulations in accordance with KRS Chapter 13A to:
- (a) Coordinate and improve early childhood development services, outcomes, and policies;
  - (b) Establish procedures that relate to its governance;
  - (c) Designate service areas of the Commonwealth where the community early childhood councils may be established to identify and address the early childhood development needs of young children and their families for the communities that they serve;
  - (d) Establish procedures that relate to the monitoring of grants, services, and activities of the community early childhood councils and their governance;
  - (e) Establish procedures for accountability and measurement of the success of programs that receive funds from the authority; and
  - (f) Establish standards for the payment of funds to a designated service provider and grantee of a community early childhood council. These standards shall include requirements relating to:
    - 1. The financial management of funds paid to grantees;
    - 2. The maintenance of records; and
    - 3. An independent audit of the use of grant funds.
- (6) The authority may disband or suspend a council, and may remove one (1) or more members for nonperformance or malfeasance. The authority may also recover funds that have been determined by the authority to have been misappropriated or misspent in relation to a grant award.
- (7) An appeal to the authority may be made by a council as to a decision made by the authority on the disbanding or suspension of a council, service provider, or grantee on a determination that funds have been misappropriated or misspent and are subject to recovery. The appeal shall be conducted in accordance with KRS Chapter 13B.
- (8) The authority, councils established by the authority, and initiatives funded by the authority with expenditures from the early childhood development fund shall expire when:
- (a) Funds are no longer designated to the Commonwealth from the master settlement agreement signed on November 22, 1998, between the participating tobacco manufacturers and the forty (40) settling states or related federal legislation; or
  - (b) Funds are no longer designated to the early childhood development fund from gifts, grants, or federal funds to fund the authority, the councils established by the authority, or any programs that had been funded by the authority with expenditures from the early childhood development fund.

- (9) (a) The authority shall establish a Healthy Babies Work Group, consisting of representatives from the Cabinet for Health and Family Services; public schools; local libraries; the Kentucky March of Dimes; family resource centers; agencies that provide benefits under the Special Supplementation Food Program for Women, Infants, and Children; the Folic Acid Awareness Campaign; physicians; secondary health education and consumer sciences teachers; the Spina Bifida Association of Kentucky; and other persons as appropriate. Representatives shall reflect the geographic, racial, and gender diversity of the Commonwealth.
- (b) The Healthy Babies Work Group shall collaborate on development and implementation of a public awareness campaign to inform the citizens of the Commonwealth about the benefits of good nutrition, folic acid, smoking cessation, and healthy lifestyle choices that lead to healthy babies, the effects of alcohol and substance abuse on fetal and early childhood development, and the need for a vision examination of children at age three (3). The work group shall work with local health departments for the vision examination outreach program.
- (10) The authority shall work with local entities, including but not limited to health departments and service providers, to establish to the extent of available funding a vision examination program for children who are not eligible for the Kentucky Children's Health Insurance Program or Medicaid, and who do not have insurance coverage for a vision examination. The authority shall provide that primary students, regardless of age, who are having difficulty with reading may be referred and receive a second vision examination as described in KRS 156.160 at no cost to the parent.
- (11) The authority shall develop a request for proposal process by which local early childhood councils may request any funding appropriated to the authority for use by the councils.

➔Section 63. KRS 210.031 is amended to read as follows:

- (1) The cabinet shall establish an advisory committee of sixteen (16) members to advise the Department for Mental Health and Mental Retardation Services of the need for particular services for persons who are deaf or hard-of-hearing.
- (a) At least eight (8) members shall be deaf or hard-of-hearing and shall be appointed by the secretary. Four (4) deaf or hard-of-hearing members, representing one (1) of each of the following organizations, shall be appointed from a list of at least two (2) nominees submitted from each of the following organizations:
1. The Kentucky Association of the Deaf;
  2. The A.G. Bell Association;
  3. The Kentucky School for the Deaf Alumni Association; and
  4. Self Help for the Hard of Hearing.
- The remaining four (4) deaf or hard-of-hearing members shall be appointed by the secretary from a list of at least eight (8) nominees submitted by the Kentucky Commission on the Deaf and Hard of Hearing.
- (b) One (1) member shall be a family member of a deaf or hard-of-hearing consumer of mental health services and shall be appointed by the secretary from a list of nominees accepted from any source.
- (c) The head of each of the following entities shall appoint one (1) member to the advisory committee:
1. The Cabinet for Health and Family Services, Department for Mental Health and Mental Retardation Services;
  2. The Education *and Workforce Development* Cabinet, Office of Vocational Rehabilitation;
  3. The Cabinet for Health and Family Services, Department for Aging and Independent Living;
  4. The Education *and Workforce Development* Cabinet, Commission on the Deaf and Hard of Hearing;
  5. The Kentucky Registry of Interpreters for the Deaf; and
  6. A Kentucky School for the Deaf staff person involved in education.
- (d) The remaining member shall be a representative of a regional mental health/mental retardation board, appointed by the commissioner of the Department for Mental Health and Mental Retardation Services

from a list composed of two (2) names submitted by each regional mental health/mental retardation board.

- (2) Of the members defined in subsection (1)(a) and (b) of this section, three (3) shall be appointed for a one (1) year term, three (3) shall be appointed for a two (2) year term, and three (3) shall be appointed for a three (3) year term; thereafter, they shall be appointed for three (3) year terms. The members defined under subsection (1)(c) and (d) of this section shall serve with no fixed term of office.
- (3) The members defined under subsection (1)(a) and (b) of this section shall serve without compensation but shall be reimbursed for actual and necessary expenses; the members defined under subsection (1)(c) and (d) of this section shall serve without compensation or reimbursement of any kind.
- (4) The Department for Mental Health and Mental Retardation Services shall make available personnel to serve as staff to the advisory committee.
- (5) The advisory committee shall meet quarterly at a location determined by the committee chair.
- (6) (a) The advisory committee shall prepare a biennial report which:
  1. Describes the accommodations and the mental health, mental retardation, development disability, and substance abuse services made accessible to deaf and hard-of-hearing persons;
  2. Reports the number of deaf or hard-of-hearing persons served;
  3. Identifies additional service needs for the deaf and hard-of-hearing; and
  4. Identifies a plan to address unmet service needs.
- (b) The report shall be submitted to the secretary, the commissioner of the Department for Mental Health and Mental Retardation Services, and the Interim Joint Committee on Health and Welfare by July 1 of every odd-numbered year.

➔Section 64. KRS 247.804 is amended to read as follows:

An Agritourism Advisory Council shall be established within the Department of Agriculture to advise and assist the Office of Agritourism. The Agritourism Advisory Council shall be composed of:

- (1) One (1) representative from each of the following entities:
  - (a) Department of Agriculture, appointed by the Commissioner of Agriculture;
  - (b) Commerce Cabinet, appointed by the secretary of the cabinet;
  - (c) Education *and Workforce Development* Cabinet, appointed by the secretary of the cabinet;
  - (d) Department of Fish and Wildlife Resources Commission, appointed by the commissioner of the department;
  - (e) University of Kentucky Cooperative Extension Service;
  - (f) Kentucky Tourism Council;
  - (g) Kentucky Farm Bureau;
  - (h) Kentucky Association of Fairs and Horse Shows;
  - (i) Southern and Eastern Kentucky Tourism Development Association;
  - (j) Licking River Valley Resource Conservation and Development Council;
  - (k) Buffalo Trace Covered Bridge Authority;
  - (l) Kentucky Chamber of Commerce;
  - (m) Kentucky Council of Area Development Districts; and
  - (n) Jackson Purchase Resource Conservation and Development Foundation, Inc.;
- (2) The Governor, or a designee;

- (3) Two (2) members of the General Assembly who hold an interest in agriculture, one (1) appointed by the President of the Senate and one (1) appointed by the Speaker of the House of Representatives; and
- (4) Nine (9) representatives of agriculture or the agritourism industry, appointed by the Commissioner of Agriculture from a list of candidates compiled by the tourism regions as set forth in KRS 247.802(4). Each tourism region shall submit three (3) candidates with a business interest in agritourism who reside within that region, and the Commissioner shall appoint one (1) candidate from each region from those names submitted.

➔Section 65. KRS 281.870 is amended to read as follows:

- (1) There is hereby created a Coordinated Transportation Advisory Committee, also known as the "CTAC", that is to be composed of designated members of the cabinet, the Cabinet for Health and Family Services, and the Education *and Workforce Development* Cabinet.
- (2) Members of the CTAC shall serve terms as determined by each respective cabinet. The CTAC shall meet at least once a month, but may meet more frequently if desired, and shall maintain a written record of all meetings and actions taken. In all proceedings of the CTAC and in all actions taken by the CTAC, the cabinet and the Cabinet for Health and Family Services shall each have two (2) votes, and the Education Cabinet shall have one (1) vote. A quorum of the CTAC shall be required to conduct any official business.
- (3) The staff of the cabinet's Office of Transportation Delivery shall provide administrative support to the CTAC. The executive director of the Office of Transportation Delivery shall set the agenda for meetings of the CTAC. The Office of Transportation Delivery may promulgate administrative regulations under KRS Chapter 13A governing the human service transportation delivery program on behalf of the CTAC. The cabinet shall promulgate administrative regulations under KRS Chapter 13A to specify the duties and responsibilities of the CTAC.

➔Section 66. KRS 281.872 is amended to read as follows:

- (1) The cabinet shall employ a pool of program coordinators. Each program coordinator shall be a state employee and reside in the cabinet.
- (2) The program coordinator shall initially investigate all complaints regarding recipients, subcontractors, and the broker for the area and attempt to immediately resolve the problem. All complaints relating to Medicaid fraud or abuse shall be forwarded by the cabinet to the Cabinet for Health and Family Services. The program coordinator shall further be responsible for assisting a person with a complaint as required in subsection (4) of this section.
- (3) The program coordinator shall investigate issues of eligibility that result in a person being denied transportation, determine the status of the person's case, and attempt to immediately resolve the matter in order for the person to continue to receive transportation services. A broker shall not deny any person transportation services until the program coordinator resolves the question of the person's eligibility and verifies to the broker that the person is actually ineligible to receive transportation services. A broker who violates the provisions of this subsection shall be fined one thousand dollars (\$1,000) and shall be subject to his or her contract being revoked by the cabinet. The program coordinator shall coordinate information about eligibility to participate in the human service transportation delivery program between the cabinet, the Cabinet for Health and Family Services, and the Education *and Workforce Development* Cabinet. The cabinet shall ensure each program coordinator has direct computer access to all relevant databases used by all state agencies to administer the human service transportation delivery program. The Department for Medicaid Services shall provide each program coordinator with a monthly eligibility list for the area.
- (4) If a program coordinator is unable to resolve a complaint against a broker or subcontractor to the satisfaction of the person lodging the complaint on the same business day the complaint is made, the program coordinator shall immediately act to assist the person in contacting the appropriate state agency to resolve the complaint. The program coordinator shall ensure that the cabinet, the Cabinet for Health and Family Services, and the Education *and Workforce Development* Cabinet strictly adhere to the provisions of 42 C.F.R. governing a person's right to appeal the denial of service or failure for a complaint to be acted upon promptly. The cabinet shall be required to inform in writing, every person who has either been denied transportation or who has failed to have a complaint resolved in a prompt manner under the human service transportation delivery program, of their right to a hearing to be held in the county where the person lives, and the process to follow to obtain a hearing.

- (5) All brokers and subcontractors shall be prohibited from retaliating or attempting retribution in any way against any person using the human service transportation delivery program who files a complaint. A broker or subcontractor who is determined by the cabinet to have violated the provisions of this subsection, after an investigation and hearing conducted by the cabinet, shall have his or her contract revoked by the cabinet within ninety (90) days of the hearing and shall be prohibited from participating in the human service transportation delivery program for five (5) years from the date of the cabinet's determination.

➔Section 67. KRS 314.452 is amended to read as follows:

- (1) As used in KRS 314.450 to 314.464, "board" means the board of the Nursing Workforce Foundation.
- (2) The Nursing Workforce Foundation is created and shall be governed by a board composed of members who are residents of Kentucky appointed by the Governor.
- (3) The foundation shall be governed by a board, the membership of which shall consist of the following:
  - (a) President, or a designee, of the Kentucky Community and Technical College System;
  - (b) President, or a designee, of the Association of Independent Kentucky Colleges and Universities;
  - (c) President, or a designee, of the Council on Postsecondary Education;
  - (d) Secretary, or a designee, of the Education *and Workforce Development* Cabinet;
  - (e) Executive director, or a designee, of the Kentucky Board of Nursing;
  - (f) President, or a designee, of the Kentucky Nurses Association;
  - (g) President, or a designee, of the Kentucky Coalition of Nurse Practitioners and Nurse Midwives;
  - (h) President, or a designee, of the Kentucky Council of Associate Degree Nursing Programs;
  - (i) Chair, or a designee, of the Kentucky Association of Baccalaureate and Higher Degree Nursing Programs; and
  - (j) Two (2) members from a list of three (3) individuals recommended by the Kentucky Hospital Association, with one (1) representing a rural hospital and one (1) representing an urban hospital.
- (4) The board shall elect a chairman from its members. The board shall meet at least four (4) times a year and at the call of the chairman or a majority of the board members. A majority of the board membership shall constitute a quorum.
- (5) Each hospital representative appointment shall be for a term of four (4) years. A vacancy on the board shall be filled by the Governor as provided under this section.
- (6) Members of the board shall be entitled to reimbursement for expenses when carrying out official duties of the board in accordance with state administrative regulations relating to travel reimbursement.
- (7) The board shall employ or contract with a qualified person or nonprofit organization to serve as executive director to the board and shall fix the compensation and define the duties. The executive director shall be responsible for the performance of the administrative functions of the board and such other duties as the board may direct. The board may employ or contract with other persons as may be necessary to carry on the work of the board.
- (8) The board shall be a nonprofit, quasi-governmental corporation subject to the Kentucky Open Records Law and Kentucky Open Meetings Law. The board shall have any and all general corporate, trust, or other powers reasonable or necessary to fulfill the requirements and purposes of KRS 314.450 to 314.464.
- (9) The provisions of KRS 314.450 to 314.464 shall be funded by any grants, gifts, and contributions received by the board or other general funds appropriated by the General Assembly.

➔Section 68. KRS 314.464 is amended to read as follows:

Each school of nursing as defined under KRS 314.011 that is located in Kentucky, whether or not awarded funding under KRS 314.450 to 314.464, shall submit an annual report by August 1 to the board, the Kentucky Board of Nursing, the Council on Postsecondary Education, the Education *and Workforce Development* Cabinet, and the Legislative Research Commission detailing its strategies for increasing the enrollment of students who graduate from

the program prepared for licensure as registered nurses or licensed practical nurses. Efforts undertaken by each school to increase cultural diversity within its nursing students shall be included in the annual report to the board.

➔Section 69. KRS 341.005 is amended to read as follows:

As used in this chapter, unless the context clearly requires otherwise:

- (1) "Cabinet" means the Education *and Workforce Development* Cabinet;
- (2) "Secretary" means the secretary of the Education *and Workforce Development* Cabinet or his or her duly authorized representative; and
- (3) "Commission" means the unemployment insurance commission.

➔Section 70. KRS 341.080 is amended to read as follows:

As used in this chapter, unless the context clearly requires otherwise:

- (1) Except in so far as the Education *and Workforce Development* Cabinet by regulation prescribes the equivalent thereof to meet particular conditions:
  - (a) "Calendar year" means a year beginning on January 1; and
  - (b) "Calendar quarter" means three (3) consecutive months beginning on January 1, April 1, July 1, or October 1;
- (2) "Week" means such period of seven (7) consecutive calendar days as the Education *and Workforce Development* Cabinet regulation prescribes; and
- (3) "Week of unemployment" means any period of seven (7) consecutive days, as prescribed by the Education *and Workforce Development* Cabinet in administrative regulations, during which a worker performed less than full-time work and earned less than an amount equal to one and one-fourth (1-1/4) times the benefit rate determined for him in accordance with the provisions of subsection (2) of KRS 341.380.

➔Section 71. KRS 341.110 is amended to read as follows:

- (1) In the Education *and Workforce Development* Cabinet, there shall be an Unemployment Insurance Commission composed of the secretary or his or her duly authorized representative, as ex officio chairman and two (2) members appointed by the Governor.
- (2) The secretary shall represent the state and the public. One (1) member shall be appointed as a representative of labor and one (1) as a representative of employers. The chairman and one (1) other member of the commission shall constitute a quorum.
- (3) The members representing labor and employers shall be appointed on the basis of their merit and fitness to perform their duties and exercise the responsibilities of their offices. They shall be citizens of this state and not less than thirty (30) years of age.
- (4) The terms of each member appointed to represent labor and employers shall be for four (4) years from the date of appointment and until a successor is appointed and qualified, except that appointments to vacancies shall be for the unexpired term.
- (5) The compensation of the members representing labor and employers shall be \$12,000 each per annum.

➔Section 72. KRS 341.125 is amended to read as follows:

- (1) It shall be the duty of the secretary of the Education *and Workforce Development* Cabinet to administer this chapter; and he shall have power and authority to make such expenditures, require such reports, make such investigations, and take such other action not specifically assigned to the cabinet, as he or she deems necessary for the proper administration of this chapter.
- (2) The secretary is authorized, subject to the provisions of KRS Chapters 12, 42, 45, and 45A, to appoint, fix the compensation, and prescribe duties and powers of such officers and employees as may be necessary in the performance of his or her duties under this chapter. All positions shall be filled by persons selected and appointed on a nonpartisan merit basis. The secretary shall not employ or pay any person who is an officer or committee member of any political party organization. The secretary may delegate to any such person so appointed such power and authority as he or she deems reasonable and proper for the effective administration of this chapter.

- (3) The salary and expenses of the secretary and his or her staff shall be considered a proper cost of the administration of this chapter, to be charged to the unemployment compensation administration fund in that proportion which the cost of such services rendered in the administration of this chapter bears to the overall cost of the services rendered in the administration of the cabinet.
- (4) The secretary shall submit to the Governor an annual report covering the administration and operation of this chapter and make such recommendations for amendments to this chapter as he or she deems proper.
- (5) In the administration of this chapter the secretary shall cooperate to the fullest extent possible with any agency of this state or any other state or of the United States and shall take such action, through the adoption of appropriate rules, regulations, administrative methods, and standards, as may be necessary to secure for this state and its citizens all the advantages available under the provisions of the Social Security Act, as amended, that relate to unemployment compensation, the Federal Unemployment Tax Act, as amended, the Wagner-Peyser Act, as amended, and the Federal-State Extended Unemployment Compensation Act of 1970.

➔Section 73. KRS 341.145 is amended to read as follows:

- (1) The secretary of the Education *and Workforce Development* Cabinet may enter into arrangements with the appropriate agencies of other states or of the federal government, or both, for the purpose of assisting the secretary and such agencies in the payment of benefits and the furnishing of services to unemployed or underemployed workers. Such arrangements may provide that the respective agencies shall, for and on behalf of each other, act as agents in effecting registrations for work, notices of unemployment, and any other certifications or statements relating to a worker's claim for benefits; in making investigations, taking depositions, holding hearings, or otherwise securing information relating to benefit eligibility and payments; and in such other matters as the secretary considers suitable in effectuating the purpose of these administrative arrangements.
- (2) The secretary may enter into arrangements with the appropriate agencies of other states or the federal government whereby workers performing services in this and other states for a single employing unit under circumstances not specifically provided in KRS 341.050, or under similar provisions in the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this state or within one of such other states.
- (3)
  - (a) The secretary shall participate in any arrangements for the payment of benefits on the basis of combining an individual's wages and employment covered under this chapter with his wages and employment covered under the unemployment compensation laws of other states or the federal government which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of benefits in such situations and which include provisions for applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two (2) or more state unemployment compensation laws, and avoiding the duplicate use of wages and employment by reason of such combining. Reimbursements to another state or the federal government, paid from the fund pursuant to this subsection, shall be deemed to be benefits for the purposes of this chapter and charged to contributory employers' reserve accounts and reimbursing employers' accounts in accordance with the provisions of KRS 341.530(2) and (3) to the extent of calculations made on wages paid during the base period established by KRS 341.090 and wages paid after such base period; provided, however, benefits based on a period previous to the base-wage period established by KRS 341.090 shall be charged to the pooled account for contributing employers only. Provided, that if the Secretary of Labor determines that the charging of reimbursements provided above is inconsistent with the requirements of the Federal Unemployment Tax Act, charges of such reimbursements shall then be made in accordance with regulations prescribed by the secretary.
  - (b) In order that such reciprocal arrangements, when entered into, may be effectuated, wages for insured work under an employment security law of another state or of the federal government shall be deemed to be wages earned in covered employment from a subject employer for the purpose of determining his benefits under this chapter.
- (4) Notwithstanding any other provision of this chapter, benefits shall not be denied or reduced to an individual solely because he files a claim in another state (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another state (or such a contiguous country) at the time he files a claim for benefits.

- (5) To the extent permissible under the laws and Constitution of the United States, the secretary is authorized to enter into or cooperate in arrangements or reciprocal agreements with appropriate and duly authorized agencies of other states or the United States Secretary of Labor or both, whereby:
- (a) Overpayments of unemployment benefits, as determined under this chapter, shall be recoverable (after due notice and opportunity for appeal has been provided to the claimant) by offset from unemployment benefits otherwise payable under the unemployment compensation law of another state, in either the current or any subsequent benefit year, in an amount equivalent to the amount of overpayment determined under this chapter, provided the Office of Employment and Training, Department of Workforce Investment, certifies to the other state the facts involved and that the claimant is liable to repay the benefits and the office requests the other state to recover the benefits; and
  - (b) Overpayments of unemployment benefits, as determined under the unemployment compensation law of another state, shall be recoverable (after such state has provided due notice and opportunity for appeal to the claimant) by offset from unemployment benefits otherwise payable under this chapter, in either the current or subsequent benefit year, in an amount equivalent to the amount of overpayment determined by such other state, provided such state certifies to the office the facts involved and that the individual is liable to repay the benefits and the state requests the office to recover the benefits; and
  - (c) Provided there is in effect a reciprocal agreement between this state and the United States Secretary of Labor, as authorized by Section 303(g)(2) of the Social Security Act, the overpayment of unemployment benefits or allowances for unemployment provided under a federal program administered by this state shall be recoverable by offset from benefits otherwise payable under this chapter or any such federal program. Such agreement shall also suffice to permit the offset from unemployment benefits, otherwise payable under a federal program administered by this state, the overpayment of unemployment benefits paid under this chapter.

If another state also has in effect a like agreement with the United States Secretary of Labor, then these provisions for cross-offset of state and federal unemployment benefits shall apply to benefits otherwise payable under this chapter, the laws of the other state or any federal unemployment program administered by either state.

➔Section 74. KRS 341.190 is amended to read as follows:

- (1) Each employing unit shall keep true and accurate work records of all workers employed by it, of the wages paid by it to each worker, and such other information as the secretary of the Education *and Workforce Development* Cabinet considers necessary for the proper administration of this chapter. The records shall be open for inspection and subject to being copied by the secretary or his or her authorized representatives at any reasonable time and as often as necessary.
- (2) The secretary may require any employing unit to furnish to the cabinet at its central office from time to time information concerning the total amounts of wages paid, total number of persons employed, an individual record of each worker employed, an individual record of each worker whose employment has been terminated or who has been laid off, an individual wage and hour record of each worker employed part time entitled to benefits, and other related matters, including hours worked, which the secretary considers necessary to the effective administration of this chapter.
- (3) Information obtained from an employing unit or individual and other records made by the cabinet in the administration of this chapter are confidential and shall not be published or be open for public inspection, except as provided below:
  - (a) Information and records may be made available to public employees in the performance of their duties, but the agency receiving the information and records shall assure the confidentiality, as required in this section, of all information and records so released by entering into a written, enforceable, and terminable agreement with the cabinet and by satisfying the safeguards set forth in the federal confidentiality and disclosure requirements as prescribed by 42 U.S.C. sec. 503, 26 U.S.C. sec. 3304, and 20 C.F.R. sec. 603.9;
  - (b) A claimant or employing unit or his legal representative shall be provided, upon request, information and records maintained by the cabinet in the administration of his claim, his reserve account, his reimbursing employer account, or any proceeding under this chapter to which he is a party;

- (c) A public official with authority under state or federal law to obtain the information and records by subpoena, other than a clerk of court on behalf of a litigant, shall be provided information and records upon service of a duly issued subpoena;
  - (d) A federal official, when required for the purposes of oversight and auditing of the unemployment insurance program, shall be provided information and records;
  - (e) Statistical information derived from information and records obtained or made by the cabinet may be published, if it in no way reveals the identity of any claimant or employing unit; and
  - (f) Nothing in this section shall preclude the secretary or any employee of the cabinet from testifying in any proceeding under this chapter or in any court, or from introducing as evidence information or records obtained or made by the cabinet in an action for violation of state or federal law to which the cabinet is a party or upon order of the court.
- (4) Disclosures shall be made under subsection (3) of this section only if:
- (a) The disclosure is necessary for the proper administration of the unemployment insurance program;
  - (b) No more than an incidental amount of staff time or a nominal processing cost is required to make the disclosure; or
  - (c) The cost of providing the information and records is paid by the recipient prior to the disclosure, consistent with federal laws and regulations, except this requirement shall not apply to disclosures made under subsection (3)(c) and (f) of this section if the cabinet attempts without success to recover the cost of disclosure. For disclosures made to public employees under subsection (3)(a) of this section, this requirement shall be met if the agency provides a reciprocal benefit to the cabinet in the administration of the unemployment insurance program, or if a reasonable reimbursement for the disclosure shall be determined under federal law.
- (5) Any disclosure or use of information and records that is inconsistent with the provisions of this section shall be subject to the penalty prescribed in KRS 341.990(11).
- (6) No information or records held confidential under subsection (3) of this section shall be the subject matter or basis for any suit for slander or libel in any court, but no employer or employee, or his representative, testifying before the commission, the secretary, or any duly authorized representative thereof, shall be exempt from punishment for perjury.

➔Section 75. KRS 341.230 is amended to read as follows:

The secretary may authorize the destruction of such original reports and records as have been properly recorded and summarized in the permanent records of the Education *and Workforce Development* Cabinet or are no longer considered necessary for the proper administration of this chapter. Wage records of the individual worker or transcripts thereof may be destroyed or disposed of two (2) years after the expiration of the period covered by them or upon proof of death of the worker. Such destruction or disposition shall be made only by order of the secretary. Any money received from the disposition of such records shall be deposited to the credit of the unemployment compensation administration fund.

➔Section 76. KRS 341.245 is amended to read as follows:

Subject to the provisions of KRS 56.440 to 56.550, inclusive, the secretary of the Education *and Workforce Development* Cabinet is authorized and empowered to use all or any part of the funds accumulated under the provisions of KRS 341.295 for the purpose of acquiring suitable space for either central or district offices of the cabinet by way of purchase, lease, contract, or in any other manner including the right to use said funds or any part thereof to assist in financing the construction of any building erected by the Commonwealth or any of its agencies wherein available space will be provided for the cabinet under lease or contract between the cabinet and the Commonwealth or such other agency whereby said cabinet will continue to occupy such space, rent free, after the cost of financing such building has been liquidated.

➔Section 77. KRS 341.275 is amended to read as follows:

- (1) For the purpose of this section, a nonprofit organization is an organization (or group of organizations) described in Section 501(c)(3) of the United States Internal Revenue Code which is exempt from income tax under Section 501(a) of such code. For the purpose of this section, "cabinet" shall mean the Education *and*

**Workforce Development** Cabinet and "secretary" shall mean the secretary of the Education **and Workforce Development** Cabinet.

- (2) Any nonprofit organization which, pursuant to KRS 341.070(4), is, or becomes, a subject employer shall pay contributions under the provisions of KRS 341.270, unless it elects, in accordance with this section, to pay to the cabinet for the fund an amount equal to the amount of regular benefits and of one-half (1/2) of the extended benefits paid to workers for weeks of unemployment that is attributable to service in the employ of the nonprofit organization, performed during the effective period of the election but only if the employer is the worker's most recent employer. No employer shall be deemed to be the most recent employer unless the eligible worker to whom benefits are payable shall have worked for that employer in each of ten (10) weeks whether or not consecutive.
  - (a) Any nonprofit organization which is, or becomes, a subject employer on July 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than the remainder of 1972 and the calendar year of 1973, provided it files with the cabinet a written notice of its election within the thirty (30) day period immediately following such date.
  - (b) Any nonprofit organization which becomes a subject employer after July 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than the period of subjectivity during the year in which such subjectivity begins and the following calendar year by filing a written notice of its election with the cabinet not later than thirty (30) days immediately following the date of the determination of such subjectivity.
  - (c) Any nonprofit organization which makes an election in accordance with paragraph (a) or paragraph (b) of this subsection will continue to be liable for payments in lieu of contributions until it files with the secretary a written notice terminating its election not later than thirty (30) days prior to the beginning of the calendar year for which such termination shall first be effective, except that liability for payments in lieu of contributions shall continue thereafter with respect to wages paid prior to the effective date of such termination.
  - (d) Any nonprofit organization which has been paying contributions under this chapter for a period subsequent to July 1, 1972, may change to a reimbursable basis by filing with the cabinet not later than thirty (30) days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by such organization for that and the following year.
  - (e) The secretary may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.
  - (f) The secretary shall notify each nonprofit organization of any determination which may be made of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to appeal and review in accordance with the provisions of KRS 341.430(2).
- (3) Payments in lieu of contributions shall be made in accordance with the provisions of this subsection.
  - (a) At the end of each calendar quarter, the cabinet shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half (1/2) of the amount of extended benefits paid during such quarter plus any prior period adjustments, which are attributable to service performed in covered employment in the employ of such organization.
  - (b) Payment of any bill rendered under paragraph (a) shall be made not later than thirty (30) days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review in accordance with paragraph (d) of this subsection.
  - (c) Payments made by any nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of workers in the employ of the organization.
  - (d) The amount due specified in any bill from the secretary shall be conclusive on the organization unless, not later than fifteen (15) days after the bill was mailed to its last known address or otherwise delivered to it, the organization files an appeal to the commission setting forth the grounds for such appeal.

Proceedings on appeal to the commission from the amount of a bill rendered under this subsection shall be in accordance with the provisions of KRS 341.430, and the decision of the commission shall be subject to review under the provisions of KRS 341.460(1).

- (e) Past-due payments of amounts in lieu of contributions shall be subject to the same interest, penalties, collection service, and lien provisions that, pursuant to KRS 341.300 to 341.310, apply to past-due contributions.
- (4) (a) The secretary may, in accordance with regulations prescribed by the cabinet, require any nonprofit organization that elects to become liable for payments in lieu of contributions to deposit with the cabinet, within thirty (30) days after the effective date of its election as a condition thereof, money equal to two percent (2%) of the organization's total wages paid for employment as defined in KRS 341.050(1)(e) for the four (4) calendar quarters immediately preceding the effective date of such election. If the nonprofit organization did not pay wages in each of such four (4) calendar quarters, the amount of the deposit shall be as determined by the secretary.
- (b) Money deposited in accordance with this subsection shall be retained by the cabinet in an escrow account until all possible liability to the fund under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The cabinet may deduct from the money deposited under this subsection by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in subsection (3)(e) of this section. The secretary shall require the organization within thirty (30) days following any deduction from a money deposit under the provisions of this subsection to deposit sufficient additional money to make whole the organization's deposit at the prior level. The secretary may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, he determines that an adjustment is necessary, he shall require the organization to make additional deposit within thirty (30) days of written notice of his determination or shall return to it such portion of the deposit as he no longer considers necessary, whichever action is appropriate.
- (c) If any nonprofit organization fails to make a deposit, or to increase or make whole the amount of a previously made deposit, as provided under this subsection, the secretary may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than the remainder of that calendar year and the following calendar year beginning with the quarter in which such termination becomes effective; provided, that the secretary may extend for good cause the applicable filing, deposit, or adjustment period by not more than sixty (60) days.
- (5) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under subsection (3) of this section, the secretary may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next calendar year, and such termination shall be effective for that and the next calendar year.
- (6) Notwithstanding any other section of this chapter, no employing unit electing to make payments in lieu of contributions under the provisions of this section shall be entitled to relief of benefit charges.

➔Section 78. KRS 341.370 is amended to read as follows:

- (1) A worker shall be disqualified from receiving benefits for the duration of any period of unemployment with respect to which:
  - (a) He has failed without good cause either to apply for available, suitable work when so directed by the employment office or the secretary or to accept suitable work when offered him, or to return to his customary self-employment when so directed by the secretary; or
  - (b) He has been discharged for misconduct or dishonesty connected with his most recent work, or from any work which occurred after the first day of the worker's base period and which last preceded his most recent work, but legitimate activity in connection with labor organizations or failure to join a company union shall not be construed as misconduct; or
  - (c) He has left his most recent suitable work or any other suitable work which occurred after the first day of the worker's base period and which last preceded his most recent work voluntarily without good cause attributable to the employment. No otherwise eligible worker shall be disqualified from receiving benefits for:

1. Leaving his next most recent suitable work which was concurrent with his most recent work;
  2. Leaving work which is one hundred (100) road miles or more, as measured on a one (1) way basis, from his home to accept work which is less than one hundred (100) road miles from his home;
  3. Accepting work which is a bona fide job offer with a reasonable expectation of continued employment; or
  4.
    - a. Leaving work to accompany the worker's spouse to a different state when the spouse is reassigned by the military.
    - b. Subdivision a. of this subparagraph shall apply only if the state of relocation has adopted a statute substantially similar to that subdivision.
- (2) A worker shall be disqualified from receiving benefits for any week with respect to which he knowingly made a false statement to establish his right to or the amount of his benefits, and, within the succeeding twenty-four (24) months, for the additional weeks immediately following the date of discovery, not to exceed a total of fifty-two (52), as may be determined by the secretary.
  - (3) No worker shall be disqualified under paragraph (b) or (c) of subsection (1) of this section unless the employer, within a reasonable time as prescribed by regulations promulgated by the secretary, notifies the Education *and Workforce Development* Cabinet and the worker in writing of the alleged voluntary quitting or the discharge for misconduct. Nothing in this subsection shall restrict the right of the secretary to disqualify a worker whose employer has refused or failed to notify the Education *and Workforce Development* Cabinet of the alleged voluntary quitting or discharge for misconduct, if the alleged voluntary quitting or discharge for misconduct is known to the secretary prior to the time benefits are paid to the worker. The exercise of the right by the secretary, in the absence of timely notice from the employer, shall not relieve the employer's reserve account or reimbursing employer's account of benefit charges under the provisions of subsection (3) of KRS 341.530.
  - (4) As used in this section and in subsection (3) of KRS 341.530, "most recent" work shall be construed as that work which occurred after the first day of the worker's base period and which last preceded the week of unemployment with respect to which benefits are claimed; except that, if the work last preceding the week of unemployment was seasonal, intermittent, or temporary in nature, most recent work may be construed as that work last preceding the seasonal, intermittent, or temporary work.
  - (5) No worker shall be disqualified or held ineligible under the provisions of this section or KRS 341.350, who is separated from employment pursuant to a labor management contract or agreement, or pursuant to an established employer plan, program, or policy, which permits the employer to close the plant or facility for purposes of vacation or maintenance.
  - (6) "Discharge for misconduct" as used in this section shall include but not be limited to, separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge; knowing violation of a reasonable and uniformly enforced rule of an employer; unsatisfactory attendance if the worker cannot show good cause for absences or tardiness; damaging the employer's property through gross negligence; refusing to obey reasonable instructions; reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours; conduct endangering safety of self or co-workers; and incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction, which results in missing at least five (5) days work.
  - (7) "Duration of any period of unemployment," as that term is used in this section, shall be the period of time beginning with the worker's discharge, voluntary quitting, or failure to apply for or accept suitable work and running until the worker has worked in each of ten (10) weeks, whether or not consecutive, and has earned ten (10) times his weekly benefit rate in employment covered under the provisions of this chapter or a similar law of another state or of the United States.

➔Section 79. KRS 342.0011 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is

increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury;

- (2) "Occupational disease" means a disease arising out of and in the course of the employment;
- (3) An occupational disease as defined in this chapter shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence;
- (4) "Injurious exposure" shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made;
- (5) "Death" means death resulting from an injury or occupational disease;
- (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the liability of employers under this chapter and includes a self-insurer;
- (7) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his employees covered by this chapter;
- (8) "Office" means the Office of Workers' Claims in the Department of Labor;
- (9) "Executive director" means the executive director of the Office of Workers' Claims;
- (10) "Board" means the Workers' Compensation Board;
- (11)
  - (a) "Temporary total disability" means the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment;
  - (b) "Permanent partial disability" means the condition of an employee who, due to an injury, has a permanent disability rating but retains the ability to work; and
  - (c) "Permanent total disability" means the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury, except that total disability shall be irrebuttably presumed to exist for an injury that results in:
    1. Total and permanent loss of sight in both eyes;
    2. Loss of both feet at or above the ankle;
    3. Loss of both hands at or above the wrist;
    4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at or above the wrist;
    5. Permanent and complete paralysis of both arms, both legs, or one (1) arm and one (1) leg;
    6. Incurable insanity or imbecility; or
    7. Total loss of hearing;
- (12) "Income benefits" means payments made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits;
- (13) "Medical and related benefits" means payments made for medical, hospital, burial, and other services as provided in this chapter, other than income benefits;
- (14) "Compensation" means all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits;

- (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical rehabilitation services, medicines, and fittings for artificial or prosthetic devices;
- (16) "Person" means any individual, partnership, limited partnership, limited liability company, firm, association, trust, joint venture, corporation, or legal representative thereof;
- (17) "Wages" means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel, or similar advantages received from the employer, and gratuities received in the course of employment from persons other than the employer as evidenced by the employee's federal and state tax returns;
- (18) "Agriculture" means the operation of farm premises, including the planting, cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in conjunction with the farm operations, including the sale of produce at on-site markets and the processing of produce for sale at on-site markets. It shall not include the commercial processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market;
- (19) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this chapter;
- (20) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the territories of the United States;
- (21) "Alien" means a person who is not a citizen, a national, or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien;
- (22) "Insurance carrier" means every insurance carrier or insurance company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Kentucky Employers Mutual Insurance Authority and every self-insured group operating under the provisions of this chapter;
- (23) (a) "Severance or processing of coal" means all activities performed in the Commonwealth at underground, auger, and surface mining sites; all activities performed at tipple or processing plants that clean, break, size, or treat coal; and all activities performed at coal loading facilities for trucks, railroads, and barges. Severance or processing of coal shall not include acts performed by a final consumer if the acts are performed at the site of final consumption;
- (b) "Engaged in severance or processing of coal" shall include all individuals, partnerships, limited partnerships, limited liability companies, corporations, joint ventures, associations, or any other business entity in the Commonwealth which has employees on its payroll who perform any of the acts stated in paragraph (a) of this subsection, regardless of whether the acts are performed as owner of the coal or on a contract or fee basis for the actual owner of the coal. A business entity engaged in the severance or processing of coal, including but not limited to administrative or selling functions, shall be considered wholly engaged in the severance or processing of coal for the purpose of this chapter. However, a business entity which is engaged in a separate business activity not related to coal, for which a separate premium charge is not made, shall be deemed to be engaged in the severance or processing of coal only to the extent that the number of employees engaged in the severance or processing of coal bears to the total number of employees. Any employee who is involved in the business of severing or processing of coal and business activities not related to coal shall be prorated based on the time involved in severance or processing of coal bears to his total time;
- (24) "Premium" for every self-insured group means any and all assessments levied on its members by such group or contributed to it by the members thereof. For special fund assessment purposes, "premium" also includes any and all membership dues, fees, or other payments by members of the group to associations or other entities used for underwriting, claims handling, loss control, premium audit, actuarial, or other services associated with the maintenance or operation of the self-insurance group;
- (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for insurance companies means direct written premiums as reported in the annual statement to the Office of Insurance by insurance companies, except that "premiums received" includes premiums charged off or deferred, and, on insurance policies or other evidence of coverage with provisions for deductibles, the calculated cost for

coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modification, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premiums received" includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy. For policies covering leased employees as defined in KRS 342.615, "premiums received" means premiums calculated using the experience modification factor of each lessee as defined in KRS 342.615 for each leased employee for that portion of the payroll pertaining to the leased employee.

- (b) "Direct written premium" for insurance companies means the gross premium written less return premiums and premiums on policies not taken but including policy and membership fees.
- (c) "Premium," for policies effective on or after January 1, 1994, for insurance companies means all consideration, whether designated as premium or otherwise, for workers' compensation insurance paid to an insurance company or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modifications, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premium" includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.
- (d) "Return premiums" for insurance companies means amounts returned to insureds due to endorsements, retrospective adjustments, cancellations, dividends, or errors;
- (26) "Insurance policy" for an insurance company or self-insured group means the term of insurance coverage commencing from the date coverage is extended, whether a new policy or a renewal, through its expiration, not to exceed the anniversary date of the renewal for the following year;
- (27) "Self-insurance year" for a self-insured group means the annual period of certification of the group created pursuant to KRS 342.350(4) and 304.50-010;
- (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the projected value of the employer's workers' compensation claims for the next calendar year as calculated by the executive director using generally-accepted actuarial methods as follows:

- (a) The base period shall be the earliest three (3) calendar years of the five (5) calendar years immediately preceding the calendar year for which the calculation is made. The executive director shall identify each claim of the employer which has an injury date or date of last injurious exposure to the cause of an occupational disease during each one (1) of the three (3) calendar years to be used as the base, and shall assign a value to each claim. The value shall be the total of the indemnity benefits paid to date and projected to be paid, adjusted to current benefit levels, plus the medical benefits paid to date and projected to be paid for the life of the claim, plus the cost of medical and vocational rehabilitation paid to date and projected to be paid. Adjustment to current benefit levels shall be done by multiplying the weekly indemnity benefit for each claim by the number obtained by dividing the statewide average weekly wage which will be in effect for the year for which the premium is being calculated by the statewide average weekly wage in effect during the year in which the injury or date of the last exposure occurred. The total value of the claims using the adjusted weekly benefit shall then be calculated by the executive director. Values for claims in which awards have been made or settlements reached because of findings of permanent partial or permanent total disability shall be calculated using the mortality and interest discount assumptions used in the latest available statistical plan of the advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The sum of all calculated values shall be computed for all claims in the base period;
- (b) The executive director shall obtain the annual payroll for each of the three (3) years in the base period for each employer carrying his own risk from records of the office and from the records of the Office of Employment and Training, Education *and Workforce Development* Cabinet. The executive director shall multiply each of the three (3) years of payroll by the number obtained by dividing the statewide average weekly wage which will be in effect for the year in which the premium is being calculated by the statewide average weekly wage in effect in each of the years of the base period;
- (c) The executive director shall divide the total of the adjusted claim values for the three (3) year base period by the total adjusted payroll for the same three (3) year period. The value so calculated shall be multiplied by 1.25 and shall then be multiplied by the employer's most recent annualized payroll, calculated using records of the office and the Office of Employment and Training data which shall be made available for this purpose on a quarterly basis as reported, to obtain the premium for the next calendar year for assessment purposes under KRS 342.122;
- (d) For November 1, 1987, through December 31, 1988, premium for each employer carrying his own risk shall be an amount calculated by the board pursuant to the provisions contained in this subsection and such premium shall be provided to each employer carrying his own risk and to the funding commission on or before January 1, 1988. Thereafter, the calculations set forth in this subsection shall be performed annually, at the time each employer applies or renews his application for certification to carry his own risk for the next twelve (12) month period and submits payroll and other data in support of the application. The employer and the funding commission shall be notified at the time of the certification or recertification of the premium calculated by the executive director, which shall form the employer's basis for assessments pursuant to KRS 342.122 for the calendar year beginning on January 1 following the date of certification or recertification;
- (e) If an employer having fewer than five (5) years of doing business in this state applies to carry his own risk and is so certified, his premium for the purposes of KRS 342.122 shall be based on the lesser number of years of experience as may be available including the two (2) most recent years if necessary to create a three (3) year base period. If the employer has less than two (2) years of operation in this state available for the premium calculation, then his premium shall be the greater of the value obtained by the calculation called for in this subsection or the amount of security required by the executive director pursuant to KRS 342.340(1);
- (f) If an employer is certified to carry his own risk after having previously insured the risk, his premium shall be calculated using values obtained from claims incurred while insured for as many of the years of the base period as may be necessary to create a full three (3) year base. After the employer is certified to carry his own risk and has paid all amounts due for assessments upon premiums paid while insured, he shall be assessed only upon the premium calculated under this subsection;
- (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated as set forth in this subsection; and

- (h) Notwithstanding any other provision of this subsection, the premium of any employer authorized to carry its own risk for purposes of assessments due under this chapter shall be no less than thirty cents (\$0.30) per one hundred dollars (\$100) of the employer's most recent annualized payroll for employees covered by this chapter;
- (29) "SIC code" as used in this chapter means the Standard Industrial Classification Code contained in the latest edition of the Standard Industrial Classification Manual published by the Federal Office of Management and Budget;
- (30) "Investment interest" means any pecuniary or beneficial interest in a provider of medical services or treatment under this chapter, other than a provider in which that pecuniary or investment interest is obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System;
- (31) "Managed health care system" means a health care system that employs gatekeeper providers, performs utilization review, and does medical bill audits;
- (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license issued by the Commonwealth;
- (33) "Objective medical findings" means information gained through direct observation and testing of the patient applying objective or standardized methods;
- (34) "Work" means providing services to another in return for remuneration on a regular and sustained basis in a competitive economy;
- (35) "Permanent impairment rating" means percentage of whole body impairment caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest available edition; and
- (36) "Permanent disability rating" means the permanent impairment rating selected by an administrative law judge times the factor set forth in the table that appears at KRS 342.730(1)(b).

➔Section 80. KRS 342.122 is amended to read as follows:

- (1) (a) For calendar year 1997 and for each calendar year thereafter, for the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and financing the expenditures for all programs in the Department of Labor, except the Division of Employment Standards, Apprenticeship and Training and the Office of Labor-Management Relations and Mediation, as reflected in the enacted budget of the Commonwealth and enacted by the General Assembly, the funding commission shall impose a special fund assessment rate of nine percent (9%) upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying his or her own risk.
- (b) The funding commission shall, for calendar year 1998 and thereafter, establish for the special fund an assessment rate to be assessed against all premium received during that calendar year which, when added to the coal severance tax appropriated to the special fund in accordance with paragraph (c) of this section, shall produce enough revenue to amortize on a level basis the unfunded liability of the special fund as of June 30 preceding January 1 of each year, for the period remaining until December 31, 2018. The interest rate to be used in this calculation shall reflect the funding commission's investment experience to date and the current investment policies of the commission. This assessment shall be imposed upon the amount of workers' compensation premiums received by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk. On or before October 1 of each year, the commission shall notify each insurance carrier writing workers' compensation insurance in the Commonwealth, every group of self-insured employers, and each employer carrying his or her own risk,

of the rates which shall become effective on January 1 of each year, unless modified by the General Assembly.

- (c) In addition to the assessment imposed in paragraph (a) or (b) of this subsection, and notwithstanding and prior to the transfer of funds to the Local Government Economic Assistance Program under KRS 42.450 to 42.495, the Kentucky Department of Revenue shall credit nineteen million dollars (\$19,000,000) in coal severance tax revenues levied under KRS 143.020 to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission each year beginning with fiscal year 1998 and all fiscal years thereafter. The annual transfer of nineteen million dollars (\$19,000,000) shall occur in four (4) equal quarterly payments. These transfers shall occur not later than the last day of each quarter of each calendar year and shall consist of four (4) equal payments of four million, seven hundred fifty thousand dollars (\$4,750,000).
  - (d) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission.
  - (e) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on workers' compensation premiums.
- (2) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received. Receipt shall be considered timely through actual physical receipt or by postmark of the United States Postal Service. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments.
  - (3) The assessments imposed by this section may be collected by the insurance carrier from his insured. However, the insurance carrier shall not collect from the employer any amount exceeding the assessments imposed pursuant to this section. If the insurance carrier collects the assessment from an insured, the assessment shall be collected at the same time and in the same proportion as the premium is collected. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. Each statement from an insurance carrier presented to an insured reflecting premium and assessment amounts shall clearly identify and distinguish the amount to be paid for premium and the amount to be paid for assessments. No insurance carrier shall collect from an insured an amount in excess of the assessment percentages imposed by this chapter. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. The percentages imposed by this chapter for an insurance policy issued by an insurance company shall be those percentages in effect on the annual effective date of the policy, regardless of the date that the premium is actually received by the insurance company.
  - (4) A self-insured group may elect to report its premiums and to have its assessments computed in the same manner as insurance companies. This election may not be rescinded for at least ten (10) years, nor may this election be made a second time for at least another ten (10) years, except that the board of directors of the funding commission may, at its discretion, waive the ten (10) year ban on a case-by-case basis after formal petition has been made to the funding commission by a self-insured group.
  - (5) The funding commission, as part of the collection and auditing of the special fund assessments required by this section, shall annually require each insurance carrier and each self-insured group to provide a list of employers which it has insured or which are members and the amount collected from each employer. Additionally, the funding commission shall require each entity paying a special fund assessment to report the SIC code for each employer and the amount of premium collected from each SIC code. An insurance carrier or self-insured group may require its insureds or members to furnish the SIC code for each of their employees. However, the failure of any employer to furnish said codes shall not relieve the insurance carrier or self-insured group from the obligation to furnish same to the funding commission. The Office of Employment and Training, Education *and Workforce Development* Cabinet, is hereby directed to make available the SIC codes assigned in its records to specific employers to aid in the reporting and recording of the special fund assessment data.
  - (6) Each self-insured employer, self-insured group, or insurance carrier shall provide any information and submit any reports the Department of Revenue or the funding commission may require to effectuate the provisions of this section. In addition, the funding commission may enter reciprocal agreements with other governmental agencies for the exchange of information necessary to effectuate the provisions of this section.

- (7) The special fund shall be required to maintain a central claim registry of all claims to which it is named a party, giving each such claim a unique claim number and thereafter recording the status of each claim on a current basis. The registry shall be established by January 26, 1988, for all claims on which payments were made since July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all claim files in the possession of the special fund.
- (8) The fund heretofore designated as the subsequent claim fund is abolished, and there is substituted therefor the special fund as set out by this section, and all moneys and properties owned by the subsequent claim fund are transferred to the special fund.
- (9) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.
- (10) All assessment rates imposed for periods prior to January 1, 1997, under KRS 342.122 shall forever remain applicable to premiums received on policies with effective dates prior to January 1, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating under the provision of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.

→Section 81. KRS 342.143 is amended to read as follows:

For the purposes of this chapter, the average weekly wage of the state shall be determined by the executive director as follows: On or before September 1 of each year, the total wages reported by subject employers under the Kentucky Unemployment Insurance Law for the preceding calendar year shall be divided by the average monthly number of insured workers (determined by dividing the total number of insured workers reported for the preceding year by twelve (12)). The average annual wage thus obtained shall be divided by fifty-two (52) and the average weekly wage thus determined rounded to the nearest cent. The average weekly wage shall be certified to the executive director by the Education *and Workforce Development* Cabinet in a manner prescribed by the executive director by administrative regulation. The average weekly wage as so determined shall be applicable for the full period during which income or death benefits are payable, when the date of occurrence of injury or of disability in the case of disease, or of death, falls within the calendar year commencing January 1 following the September 1 determination. Whenever a change in the average weekly wage of the state is of such amount that the minimum weekly income benefits for total disability or for death are increased or decreased by one dollar (\$1) or more, or the maximum weekly income benefits for total disability or for death are increased or decreased by two dollars (\$2) or more, computed in each case and rounded to the nearest dollar, an adjustment in those minimums or maximums which are affected in the requisite amount by the change in the average weekly wage of the state shall be made which will reflect this increase or decrease, but no change in such limitations shall otherwise be made. Notwithstanding the provisions of this section, KRS 342.140 and 342.740, or any other provisions of this chapter to the contrary, the average weekly wage for calendar years 1995 and 1996 shall be determined to be no higher than the average weekly wage determined by the executive director to be in effect in the calendar year of 1994. If the average weekly wage calculated by the executive director is determined to be lower than the 1994 calendar year wage, the average weekly wage may be lowered as provided by this section. Beginning in calendar year 1997 and annually thereafter, the average weekly wage shall be calculated based upon the state average weekly wage in effect two (2) years prior to that calculation.

→Section 82. KRS 342.710 is amended to read as follows:

- (1) One of the primary purposes of this chapter shall be restoration of the injured employee to gainful employment, and preference shall be given to returning the employee to employment with the same employer or to the same or similar employment.
- (2) The executive director shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all rehabilitation facilities, both private and public.
- (3) An employee who has suffered an injury covered by this chapter shall be entitled to prompt medical rehabilitation services for whatever period of time is necessary to accomplish physical rehabilitation goals which are feasible, practical, and justifiable. When as a result of the injury he is unable to perform work for which he has previous training or experience, he shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him to suitable employment. In all such instances, the administrative law judge shall inquire whether such services have been voluntarily offered and accepted. The administrative law judge on his own motion, or upon application of any party or

carrier, after affording the parties an opportunity to be heard, may refer the employee to a qualified physician or facility for evaluation of the practicability of, need for, and kind of service, treatment, or training necessary and appropriate to render him fit for a remunerative occupation. Upon receipt of such report, the administrative law judge may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service likely to return the employee to suitable, gainful employment, be provided at the expense of the employer or his insurance carrier. Vocational rehabilitation training, treatment, or service shall not extend for a period of more than fifty-two (52) weeks, except in unusual cases when by special order of the administrative law judge, after hearing and upon a finding, determined by sound medical evidence which indicates such further rehabilitation is feasible, practical, and justifiable, the period may be extended for additional periods.

- (4) Where rehabilitation requires residence at or near the facility or institution, away from the employee's customary residence, reasonable cost of his board, lodging, or travel shall be paid for by the employer or his insurance carrier.
- (5) Refusal to accept rehabilitation pursuant to an order of an administrative law judge shall result in a fifty percent (50%) loss of compensation for each week of the period of refusal.
- (6) The executive director shall cooperate on a reciprocal basis with the Office of Vocational Rehabilitation and the Office of Employment and Training of the Education *and Workforce Development* Cabinet. In the event medical treatment, medical rehabilitation services, or vocational rehabilitation services are purchased for an injured employee by the Office of Vocational Rehabilitation or Office of Employment and Training following the refusal by the employer or his insurance carrier to provide such services, the administrative law judge, after affording the parties an opportunity to be heard, may order reimbursement of the cost of such treatment or services by the employer or his insurance carrier as apportioned in the award. This section shall not be interpreted to require mandatory evaluation of employees based on length of disability. Any administrative regulations promulgated pursuant to this section that require mandatory referral to a qualified rehabilitation counselor shall expire on April 4, 1994.
- (7) An employee who is enrolled and participating in a program of rehabilitation training pursuant to this section may elect to receive an acceleration of benefits as awarded under KRS 342.730. Such acceleration shall be available to the employee during the period of retraining, but in no event shall be paid in a weekly amount greater than sixty-six and two-thirds percent (66-2/3%) of the average weekly wage upon which the award is based, not to exceed one hundred percent (100%) of the state average weekly wage. Upon successful completion of the rehabilitation program, the total of all accelerated benefits paid shall be deducted on a dollar-for-dollar basis, without discount, from weekly benefits otherwise due the employee subject to the maximum amount of the award. Such remaining benefits, if any, shall then be divided by the number of weeks remaining payable under the award, and that amount shall be the weekly benefit due the employee. If a program of rehabilitation training is terminated by the employee prior to completion, all sums paid on an accelerated basis shall be discounted at the rate set forth in KRS 342.265 and then deducted on a dollar-for-dollar basis from weekly benefits otherwise due the employee subject to the maximum amount of the award. Such remaining benefits, after the discount, shall be divided by the number of weeks remaining payable under the award, and that amount shall be the weekly benefit due the employee. In no event shall this subsection be construed as requiring payment of benefits in excess of the total of those benefits which would otherwise be payable under the award.

➔Section 83. KRS 342.740 is amended to read as follows:

- (1) For the purposes of this chapter, the average weekly wage of the state shall be determined by the executive director as follows: On or before September 1 of each year, the total wages reported by subject employers under the Kentucky Unemployment Insurance Law for the preceding calendar year shall be divided by the average monthly number of insured workers (determined by dividing the total number of insured workers reported for the preceding year by twelve (12)). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the nearest cent. This average weekly wage shall be certified to the executive director by the Education *and Workforce Development* Cabinet in a manner prescribed by the executive director by administrative regulation. The average weekly wage as so determined shall be applicable for the full period during which income or death benefits are payable, when the date of occurrence of injury or of disablement in the case of disease, or of death, falls within the calendar year commencing January 1 following the September 1 determination.

- (2) Whenever a change in the average weekly wage of the state is of an amount that increases or decreases the minimum weekly income benefits for total disability or death by \$1 or more, or the maximum weekly income benefits for total disability or for death by \$2 or more, computed in each case and rounded to the nearest dollar, an adjustment in those minimums or maximums which are affected in the requisite amount by the change in the average weekly wage of the state shall be made which will reflect the increase or decrease, but no change in these limitations shall otherwise be made.

➔Section 84. KRS 347.040 is amended to read as follows:

- (1) The secretaries of the Cabinet for Health and Family Services and the Education *and Workforce Development* Cabinet and the chief state school officer shall jointly develop and implement a statewide plan, with adequate opportunity for public comment, to serve all persons with developmental disabilities not otherwise entitled to and receiving the same services under another state or federal act, which will include provisions for:
- (a) Identification and prompt and adequate interdisciplinary assessment;
  - (b) Case management services; and
  - (c) Services and residential alternatives as defined by this chapter in the least restrictive, individually appropriate environment.
- (2) The first plan and annual updates shall be presented to the Legislative Research Commission which shall refer it to an appropriate committee for review and comment.
- (3) The plan shall include:
- (a) The number of institution residents on waiting lists for placement in the community;
  - (b) The number of persons outside institutions on waiting lists for placement in the institution;
  - (c) The number of persons for whom no placement is made nor services provided because of a lack of community resources;
  - (d) The number, type, nature, and cost of services necessary for placement to occur;
  - (e) The status of compliance with the plan;
  - (f) The cabinets' specific efforts to increase residential and institutional services and documentation of the success of these efforts; and
  - (g) The specific plans for new efforts to enhance the opportunities for persons with developmental disabilities to move into less restrictive environments.
- (4) The state health plan shall be developed consistently with the plan required under this chapter.

➔Section 85. KRS 347.060 is amended to read as follows:

The Cabinet for Health and Family Services, the Education *and Workforce Development* Cabinet, and the Department of Education may assess reasonable charges for services rendered under this chapter, based upon a sliding fee scale which takes into account the extensive services required as a result of, and the extraordinary expenses related to, a developmental disability; provided that no charges for services rendered under this chapter may be assessed for compliance with requirements and responsibilities mandated under any state or federal act as provided under subsection (5) of KRS 347.010.

➔Section 86. The General Assembly confirms the Governor's Executive Order 2008-530, dated June 16, 2008, to the extent it is not otherwise confirmed or superseded by this Act.

**Signed by the Governor March 17, 2009.**

## CHAPTER 12

(SB 181)

AN ACT relating to reorganization.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 42 IS CREATED TO READ AS FOLLOWS:

- (1) *The Office of Policy and Audit established within the Office of the Secretary by Section 19 of this Act shall have the duties and responsibilities established in Section 25 of this Act and KRS 42.0651.*
- (2) *The Office of Policy and Audit shall be headed by an executive director who shall be appointed in accordance with KRS 12.050 and shall report to the secretary.*

➔Section 2. KRS 11.501 is repealed, reenacted as a new section of KRS Chapter 42, and amended to read as follows:

The General Assembly finds and declares that:

- (1) The establishment of the position of the executive director of the Commonwealth Office of Technology, appointed by the secretary of the Finance and Administration Cabinet with the approval of the Governor, as the Commonwealth's single point of contact and spokesperson for all matters related to information technology and resources, including policies, standard setting, deployment, strategic and tactical planning, acquisition, management, and operations is necessary and in keeping with the industry trends of the private and public sectors;
- (2) The appropriate use of information technology by the Commonwealth can improve operational productivity, reduce the cost of government, enhance service to customers, and make government more accessible to the public;
- (3) Government-wide planning, investment, protection, and direction for information resources must be enacted to:
  - (a) Ensure the effective application of information technology on state business operations;
  - (b) Ensure the quality, security, and integrity of state business operations; and
  - (c) Provide privacy to the citizens of the Commonwealth;
- (4) The Commonwealth must provide information technology infrastructure, technical directions, and a proficient organizational management structure to facilitate the productive application of information technology and resources to accomplish programmatic missions and business goals;
- (5) Oversight of large scale and government statewide systems or projects is necessary to protect the Commonwealth's investment and to ensure appropriate integration with existing or planned systems;
- (6) A career development plan and professional development program for information technology staff of the executive branch is needed to provide key competencies and adequate on-going support for the information resources of the Commonwealth and to ensure that the information technology staff will be managed as a Commonwealth resource;
- (7) The Commonwealth is in need of information technology advisory capacities to the Governor and the agencies of the executive cabinet;
- (8) Appropriate public-private partnerships to supplement existing resources must be developed as a strategy for the Commonwealth to comprehensively meet its spectrum of information technology and resource needs;
- (9) Technological and theoretical advances in information use are recent in origin, immense in scope and complexity, and change at a rapid rate, which presents Kentucky with the opportunity to provide higher quality, more timely, and more cost-effective government services to ensure standardization, interoperability, and interconnectivity;
- (10) The sharing of information resources and technologies among executive branch state agencies is the most cost-effective method of providing the highest quality and most timely government services that would otherwise be cost-prohibitive;
- (11) The ability to identify, develop, and implement changes in a rapidly moving field demands the development of mechanisms to provide for the research and development of technologies that address systems, uses, and applications; and
- (12) The exercise by the executive director of the Commonwealth Office of Technology of powers and authority conferred by *Sections 2 to 13 of this Act* ~~KRS 11.501 to 11.517~~, 45.253, 171.420, 186A.040, 186A.285, and 194A.146 shall be deemed and held to be the performance of essential governmental functions.

➔Section 3. KRS 11.503 is repealed, reenacted as a new section of KRS Chapter 42, and amended to read as follows:

As used in *Sections 2 to 13 of this Act* ~~[KRS 11.501 to 11.517]~~, unless the context requires otherwise:

- (1) "Communications" or "telecommunications" means any transmission, emission, or reception of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems, and includes all facilities and equipment performing these functions;
- (2) "Geographic information system" or "GIS" means a computerized database management system for the capture, storage, retrieval, analysis, and display of spatial or locationally defined data;
- (3) "Information resources" means the procedures, equipment, and software that are designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel;
- (4) "Information technology" means data processing and telecommunications hardware, software, services, supplies, facilities, maintenance, and training that are used to support information processing and telecommunications systems to include geographic information systems; and
- (5) "Project" means a program to provide information technologies support to functions within an executive branch state agency, which should be characterized by well-defined parameters, specific objectives, common benefits, planned activities, expected outcomes and completion dates, and an established budget with a specified source of funding.

➔Section 4. KRS 11.505 is repealed, reenacted as a new section of KRS Chapter 42, and amended to read as follows:

- (1) There is hereby created within the Finance and Administration Cabinet an agency of state government known as the Commonwealth Office of Technology.
- (2) The Commonwealth Office of Technology shall be headed by an executive director appointed by the secretary of the Finance and Administration Cabinet. Duties and functions of the executive director shall include those established in *Section 7 of this Act* ~~[KRS 11.511]~~.
- (3) The Commonwealth Office of Technology shall consist of the following four (4) offices, each headed by an executive director and organized into divisions headed by a division director:
  - (a) ~~{Office of the 911 Coordinator, which shall be headed by an executive director who shall be appointed by the Governor, subject to confirmation by the Senate, from a list of no more than three (3) candidates recommended by the Commercial Mobile Radio Service Emergency Telecommunications Board. The executive director shall serve at the pleasure of the Governor. Vacancies shall be filled in the same manner as the original appointment. The Office of the 911 Coordinator shall have the duties and responsibilities established in KRS 11.512;~~
  - (b) ~~{Office of Enterprise [Information] Technology [Policy and Planning], which shall consist of the following divisions:
 
    1. Division of *IT Governance* ~~[Enterprise Architecture]; and~~
    2. ~~{Division of Relationship and Service Management;~~
    3. ~~{Division of Geographic Information}; and~~
    4. ~~{Division of Information Technology Contract and Asset Management};~~~~
  - (b) ~~{(c)} Office of Infrastructure Services, consisting of the:
 
    1. Division of *Technical Services* ~~[Infrastructure Support];~~
    2. Division of *Communications* ~~[Security Services];~~
    3. Division of *IT Operations* ~~[Computing Services]; [and]~~
    4. Division of *Field* ~~[Communication] Services; and~~~~

5. ***Division of Printing Services, which shall be responsible for the printing and duplicating needs of state agencies as designated by the Finance and Administration Cabinet;***
- (c)~~(d)~~ Office of ***Application Development***~~[Consulting and Project Management]~~, consisting of the:
1. Division of ***Software Engineering***~~[Centers of Expertise]~~;
  2. ~~[Division of Human Services Systems]~~;
  3. ~~—~~]Division of ***Consulting and Project Management***~~[Financial Systems]~~; ***and***
  - 3.~~4.~~] Division of ***Support Services***~~[Transportation Systems]~~; and
- (d) ***Office of Chief Information Security Officer. The office shall ensure the efficiency and effectiveness of information technology security functions and responsibilities***~~[5. — Division of General Government Systems]~~.
- (4) Executive directors and division directors appointed under this section shall be appointed by the secretary with the approval of the Governor.

➔Section 5. KRS 11.507 is repealed, reenacted as a new section of KRS Chapter 42, and amended to read as follows:

- (1) The roles and duties of the Commonwealth Office of Technology shall include but not be limited to:
- (a) Providing technical support and services to all executive agencies of state government in the application of information technology;
  - (b) Assuring compatibility and connectivity of Kentucky's information systems;
  - (c) Developing strategies and policies to support and promote the effective applications of information technology within state government as a means of saving money, increasing employee productivity, and improving state services to the public, including electronic public access to information of the Commonwealth;
  - (d) Developing, implementing, and managing strategic information technology directions, standards, and enterprise architecture, including implementing necessary management processes to assure full compliance with those directions, standards, and architecture. This specifically includes but is not limited to directions, standards, and architecture related to the privacy and confidentiality of data collected and stored by state agencies;
  - (e) Promoting effective and efficient design and operation of all major information resources management processes for executive branch agencies, including improvements to work processes;
  - (f) Developing, implementing, and maintaining the technology infrastructure of the Commonwealth;
  - (g) Facilitating and fostering applied research in emerging technologies that offer the Commonwealth innovative business solutions;
  - (h) Reviewing and overseeing large or complex information technology projects and systems for compliance with statewide strategies, policies, and standards, including alignment with the Commonwealth's business goals, investment, and other risk management policies. The executive director is authorized to grant or withhold approval to initiate these projects;
  - (i) Integrating information technology resources to provide effective and supportable information technology applications in the Commonwealth;
  - (j) Establishing a central statewide geographic information clearinghouse to maintain map inventories, information on current and planned geographic information systems applications, information on grants available for the acquisition or enhancement of geographic information resources, and a directory of geographic information resources available within the state or from the federal government;
  - (k) Coordinating multiagency information technology projects, including overseeing the development and maintenance of statewide base maps and geographic information systems;
  - (l) Providing access to both consulting and technical assistance, and education and training, on the application and use of information technologies to state and local agencies;

- (m) In cooperation with other agencies, evaluating, participating in pilot studies, and making recommendations on information technology hardware and software;
  - (n) Providing staff support and technical assistance to the **Kentucky Geospatial Board**~~Geographic Information Advisory Council~~ and the Kentucky Information Technology Advisory Council;~~and~~
  - (o) **Overseeing the development of a statewide geographic information plan with input from the Kentucky Geospatial Board; and**
  - (p) Preparing proposed legislation and funding proposals for the General Assembly that will further solidify coordination and expedite implementation of information technology systems.
- (2) The Commonwealth Office of Technology may:
- (a) Provide general consulting services, technical training, and support for generic software applications, upon request from a local government, if the executive director finds that the requested services can be rendered within the established terms of the federally approved cost allocation plan;
  - (b) Promulgate administrative regulations in accordance with KRS Chapter 13A necessary for the implementation of **Sections 2 to 13 of this Act**~~[KRS 11.501 to 11.517]~~, 45.253, 171.420, 186A.040, 186A.285, and 194A.146;
  - (c) Solicit, receive, and consider proposals from any state agency, federal agency, local government, university, nonprofit organization, private person, or corporation;
  - (d) Solicit and accept money by grant, gift, donation, bequest, legislative appropriation, or other conveyance to be held, used, and applied in accordance with **Sections 2 to 13 of this Act**~~[KRS 11.501 to 11.517]~~, 45.253, 171.420, 186A.040, 186A.285, and 194A.146;
  - (e) Make and enter into memoranda of agreement and contracts necessary or incidental to the performance of duties and execution of its powers, including, but not limited to, agreements or contracts with the United States, other state agencies, and any governmental subdivision of the Commonwealth;
  - (f) Accept grants from the United States government and its agencies and instrumentalities, and from any source, other than any person, firm, or corporation, or any director, officer, or agent thereof that manufactures or sells information resources technology equipment, goods, or services. To these ends, the Commonwealth Office of Technology shall have the power to comply with those conditions and execute those agreements that are necessary, convenient, or desirable; and
  - (g) Purchase interest in contractual services, rentals of all types, supplies, materials, equipment, and other services to be used in the research and development of beneficial applications of information resources technologies. Competitive bids may not be required for:
    1. New and emerging technologies as approved by the executive director or her or his designee; or
    2. Related professional, technical, or scientific services, but contracts shall be submitted in accordance with KRS 45A.690 to 45A.725.
- (3) Nothing in this section shall be construed to alter or diminish the provisions of KRS 171.410 to 171.740 or the authority conveyed by these statutes to the Archives and Records Commission and the Department for Libraries and Archives.

➔Section 6. KRS 11.509 is repealed, reenacted as a new section of KRS Chapter 42, and amended to read as follows:

- (1) To accomplish the work of the Commonwealth Office of Technology, all organizational units and administrative bodies, as defined in KRS 12.010, and all members of the state postsecondary education system, as defined in KRS 164.001, shall furnish the Commonwealth Office of Technology necessary assistance, resources, information, records, and advice as required.
- (2) The provisions of **Sections 2 to 13 of this Act**~~[KRS 11.501 to 11.517]~~, 45.253, 171.420, 186A.040, 186A.285, and 194A.146 shall not be construed to grant any authority over the judicial or legislative branches of state government, or agencies thereof, to the Commonwealth Office of Technology.

- (3) The information, technology, personnel, agency resources, and confidential records of the Kentucky Retirement Systems and the Kentucky Teachers' Retirement System shall be excluded from the provisions of *Sections 2 to 13 of this Act* ~~(KRS 11.501 to 11.517)~~, 45.253, 171.420, 186A.040, 186A.285, and 194A.146 and shall not be under the authority of the Commonwealth Office of Technology.

➔Section 7. KRS 11.511 is repealed, reenacted as a new section of KRS Chapter 42 to read as follows:

- (1) The executive director of the Commonwealth Office of Technology shall be the principal adviser to the Governor and the executive cabinet on information technology policy, including policy on the acquisition and management of information technology and resources.
- (2) The executive director shall carry out functions necessary for the efficient, effective, and economical administration of information technology and resources within the executive branch. Roles and duties of the executive director shall include but not be limited to:
- (a) Assessing, recommending, and implementing information technology governance and organization design to include effective information technology personnel management practices;
  - (b) Integrating information technology and resources plans with agency business plans;
  - (c) Overseeing shared Commonwealth information technology resources and services;
  - (d) Performing as the focal point and representative for the Commonwealth in information technology and related areas with both the public and private sector;
  - (e) Establishing appropriate partnerships and alliances to support the effective implementation of information technology projects in the Commonwealth;
  - (f) Identifying information technology applications that should be statewide in scope, and ensuring that these applications are not developed independently or duplicated by individual state agencies of the executive branch;
  - (g) Establishing performance measurement and benchmarking policies and procedures;
  - (h) Preparing annual reports and plans concerning the status and result of the state's specific information technology plans and submitting these annual reports and plans to the Governor and the General Assembly; and
  - (i) Managing the Commonwealth Office of Technology and its budget.

➔Section 8. KRS 11.513 is repealed, reenacted as a new section of KRS Chapter 42 to read as follows:

- (1) There is hereby created the Kentucky Information Technology Advisory Council to:
- (a) Advise the executive director of the Commonwealth Office of Technology on approaches to coordinating information technology solutions among libraries, public schools, local governments, universities, and other public entities; and
  - (b) Provide a forum for the discussion of emerging technologies that enhance electronic accessibility to various publicly funded sources of information and services.
- (2) The Kentucky Information Technology Advisory Council shall consist of:
- (a) The state budget director or a designee;
  - (b) The state librarian or a designee;
  - (c) One (1) representative from the public universities to be appointed by the Governor from a list of three (3) persons submitted by the Council on Postsecondary Education;
  - (d) Three (3) citizen members from the private sector with information technology knowledge and experience appointed by the Governor;
  - (e) Two (2) representatives of local government appointed by the Governor;
  - (f) One (1) representative from the area development districts appointed by the Governor from a list of names submitted by the executive directors of the area development districts;
  - (g) One (1) member of the media appointed by the Governor;

- (h) The executive director of the Kentucky Authority for Educational Television;
  - (i) The chair of the Public Service Commission or a designee;
  - (j) Two (2) members of the Kentucky General Assembly, one (1) from each chamber, selected by the Legislative Research Commission;
  - (k) One (1) representative of the Administrative Office of the Courts;
  - (l) One (1) representative from the public schools system appointed by the Governor;
  - (m) One (1) representative of the Kentucky Chamber of Commerce; and
  - (n) The executive director of the Commonwealth Office of Technology.
- (3) Appointed members of the council shall serve for a term of two (2) years. Members who serve by virtue of an office shall serve on the council while they hold the office.
  - (4) Vacancies on the council shall be filled in the same manner as the original appointments. If a nominating organization changes its name, its successor organization having the same responsibilities and purposes shall be the nominating organization.
  - (5) Members shall receive no compensation but shall receive reimbursement for actual and necessary expenses in accordance with travel and subsistence requirements established by the Finance and Administration Cabinet.

➔Section 9. KRS 11.515 is repealed, reenacted as a new section of KRS Chapter 42, and amended to read as follows:

- (1) There is hereby established a ***Kentucky Geospatial Board, attached to the Commonwealth Office of Technology for administrative purposes,***~~Geographic Information Advisory Council~~ to advise the executive director of the Commonwealth Office of Technology on issues relating to geographic information and geographic information systems.
- (2) The ~~board~~~~council~~ shall ***recommend***~~establish and adopt~~ policies and procedures that assist state and local jurisdictions in developing, deploying, and leveraging geographic information resources and geographic information systems technology for the purpose of improving public administration.
- (3) The ~~board~~~~council~~ shall closely coordinate with users of geographic information systems to ***recommend***~~establish~~ policies and procedures that insure the maximum use of geographic information by minimizing the redundancy of geographic information and geographic information resources.
- (4) The ***Kentucky Geospatial Board***~~Geographic Information Advisory Council~~ shall consist of twenty-four (24) members and one (1) legislative liaison. The members shall be knowledgeable in the use and application of geographic information systems technology and shall have sufficient authority within their organizations to influence the implementation of council recommendations.
  - (a) The ~~board~~~~council~~ shall consist of:
    - 1. The secretary of the Transportation Cabinet or his designee;
    - 2. The secretary of the Cabinet for Health and Family Services or his or her designee;
    - 3. The director of the Kentucky Geological Survey or his designee;
    - 4. The secretary of the Finance and Administration Cabinet or his designee;
    - 5. The executive director of the Commonwealth Office of Technology or her or his designee, ***who shall serve as chair***;
    - 6. The secretary of the Economic Development Cabinet or his designee;
    - 7. The commissioner of the Governor's Office for Local Development or his designee;
    - 8. The secretary of the Justice and Public Safety Cabinet or his designee;
    - 9. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council on Postsecondary Education;
    - 10. The adjutant general of the Department of Military Affairs or his designee;

11. The commissioner of the Department of Education or his designee;
  12. The secretary of the Environmental and Public Protection Cabinet or his designee;
  13. The Commissioner of the Department of Agriculture or his designee;
  14. The secretary of the Commerce Cabinet or his designee;
  15. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky League of Cities;
  16. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky Association of Counties;
  17. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chapter of the American Planning Association;
  18. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chamber of Commerce;
  19. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Association of Land Surveyors;
  20. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Society of Professional Engineers;
  21. One (1) member appointed by the Governor from a list of three (3) persons submitted by the chairman of the Kentucky Board of Registered Geologists; and
  22. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council of Area Development Districts.
- (b) The council shall have one (1) nonvoting legislative liaison, to be appointed by the Legislative Research Commission.
- (5) ~~The chair shall be appointed by the Governor.~~ The **board**~~council~~ may have committees and subcommittees as determined by the **board**~~council~~ or an executive committee, if an executive committee exists.
- (6) A member of the **board**~~council~~ shall not:
- (a) Be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that have, a substantial interest in the geographic information industry and is doing business in the Commonwealth;
  - (b) Own, control, or have, directly or indirectly, more than ten percent (10%) interest in a business entity that has a substantial interest in the geographic information industry;
  - (c) Be in any manner connected with any contract or bid for furnishing any governmental body of the Commonwealth with geographic information systems, the computers on which they are automated, or a service related to geographic information systems;
  - (d) Be a person required to register as a lobbyist because of activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, substantial interest in the geographic information industry;
  - (e) Accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise; or
  - (f) Be liable to civil action or any action performed in good faith in the performance of duties as a **board**~~council~~ member.
- (7) Those **board**~~council~~ members specified in subsection (4)(a) of this section who serve by virtue of an office shall serve on the **board**~~council~~ while they hold that office.
- (8) Appointed members of the **board**~~council~~ shall serve for a term of four (4) years. Vacancies in the membership of the **board**~~council~~ shall be filled in the same manner as the original appointments. If a nominating organization changes its name, its successor organization having the same responsibilities and purposes shall be the nominating organization.

- (9) The **board**~~[council]~~ shall have no funds of its own, and **board**~~[council]~~ members shall not receive compensation of any kind from the **board**~~[council]~~.
- (10) A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at **board**~~[council]~~ meetings.

➔Section 10. KRS 11.5161 is repealed and reenacted as a new section of KRS Chapter 42 to read as follows:

The Kentucky Wireless Interoperability Executive Committee is hereby created to address communications interoperability, a homeland security issue which is critical to the ability of public safety first responders to communicate with each other by radio. The committee shall advise and make recommendations to the executive director of the Commonwealth Office of Technology regarding strategic wireless initiatives to achieve public safety voice and data communications interoperability.

➔Section 11. KRS 11.5162 is repealed, reenacted as a new section of KRS Chapter 42, and amended to read as follows:

As used in **Sections 10 to 12 of this Act**~~[KRS 11.5161 to 11.5163]~~, unless the context requires otherwise:

- (1) "Architecture" means the design principles, physical structure, and functional organization of a land mobile radio system;
- (2) "Frequency" means for a periodic function, the number of cycles or events per unit time that comprises the frequency spectrum used by or assigned to a wireless public safety voice or data communications system;
- (3) "Interoperability" means:
  - (a) The ability of public safety agencies to be able to communicate with one another; to exchange voice or data with one another in real time;
  - (b) The ability of systems, units, or forces to provide services to and accept services from other systems, units, or forces and to use the services so exchanged to enable them to operate effectively together; and
  - (c) The condition achieved among communications-electronics systems or items of communications-electronic equipment when information or services can be exchanged directly and satisfactorily between them and their users;
- (4) "Primary wireless public safety voice or data communications systems" means a regular interacting group of base, mobile, and associated control and fixed relay stations intended to provide land mobile radio voice or data communications service over a single area of operation for public safety agencies. This definition shall not include "911" telephone systems;
- (5) "Public safety shared infrastructure" means any component that by the nature of its function or physical characteristics can be used by multiple agencies to implement or support primary wireless public safety voice or data communications systems. This shall include but not be limited to towers, equipment shelters, radios, and other electronic equipment, backbone communications networks, and communications-related software;
- (6) "Public safety working group" means a working group whose mission is to design and develop a seamless coordinated plan for the use of the public safety frequency spectrum as regulated by the Federal Communications Commission;
- (7) "Spectrum" means a usable radio frequency in the electromagnetic distribution; and
- (8) "Standards" means:
  - (a) Engineering and technical requirements that are necessary to be employed in the design of systems, units, or forces and to use the services so exchanged to enable them to operate effectively together, including but not limited to operating frequencies, over-the-air protocols, and bandwidth; and
  - (b) Established protocol that provides a common interface.

➔Section 12. KRS 11.5163 is repealed, reenacted as a new section of KRS Chapter 42, and amended to read as follows:

- (1) The executive director shall establish and implement a statewide public safety interoperability plan. This plan shall include the development of required architecture and standards that will insure that new or upgraded

Commonwealth public safety communications systems will interoperate. The Kentucky Wireless Interoperability Executive Committee shall be responsible for the evaluation and recommendation of all wireless communications architecture, standards, and strategies. The executive director shall provide direction, stewardship, leadership, and general oversight of information technology and information resources. The executive director shall report by September 15 annually to the Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection and the Interim Joint Committee on State Government on progress and activity by agencies of the Commonwealth to comply with standards to achieve public safety communications interoperability.

- (2) The Kentucky Wireless Interoperability Executive Committee shall serve as the advisory body for all wireless communications strategies presented by agencies of the Commonwealth and local governments. All state agencies in the Commonwealth shall present all project plans for primary wireless public safety voice or data communications systems for review and recommendation by the committee, and the committee shall forward the plans to the executive director for final approval. Local government entities shall present project plans for primary wireless public safety voice or data communications systems for review and recommendation by the Kentucky Wireless Interoperability Executive Committee.
- (3) The committee shall develop funding and support plans that provide for the maintenance of and technological upgrades to the public safety shared infrastructure, and shall make recommendations to the executive director, the Governor's Office for Policy and Management, and the General Assembly.
- (4) The executive director shall examine the project plans for primary wireless public safety voice or data communications systems of state agencies as required by subsection (2) of this section, and shall determine whether they meet the required architecture and standards for primary wireless public safety voice or data communications systems.
- (5) The Kentucky Wireless Interoperability Executive Committee shall consist of *twenty (20)*~~twenty one (21)~~ members as follows:
  - (a) A person knowledgeable in the field of wireless communications appointed by the executive director who shall serve as chair;
  - (b) The executive director of the Office of Infrastructure Services, Commonwealth Office of Technology;
  - (c) ~~The executive director of the Office of the 911 Coordinator;~~
  - ~~(d) —~~The executive director of Kentucky Educational Television, or the executive director's designee;
  - ~~(d)~~~~(e)~~ The chief information officer of the Transportation Cabinet;
  - ~~(e)~~~~(f)~~ The chief information officer of the Justice and Public Safety Cabinet;
  - ~~(f)~~~~(g)~~ The chief information officer of the Department of Kentucky State Police;
  - ~~(g)~~~~(h)~~ The commissioner of the Department of Fish and Wildlife Resources, or the commissioner's designee;
  - ~~(h)~~~~(i)~~ The chief information officer of the Environmental and Public Protection Cabinet;
  - ~~(i)~~~~(j)~~ The director of the Division of Emergency Management, Department of Military Affairs;
  - ~~(j)~~~~(k)~~ The executive director of the Kentucky Office of Homeland Security;
  - ~~(k)~~~~(l)~~ The chief information officer, Department for Public Health, Cabinet for Health and Family Services;
  - ~~(l)~~~~(m)~~ A representative from an institution of postsecondary education appointed by the Governor from a list of three (3) names submitted by the president of the Council on Postsecondary Education;
  - ~~(m)~~~~(n)~~ The executive director of the Center for Rural Development, or the executive director's designee;
  - ~~(n)~~~~(o)~~ A representative from a municipal government to be appointed by the Governor from a list of three (3) names submitted by the Kentucky League of Cities;
  - ~~(o)~~~~(p)~~ A representative from a county government to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Counties;

- (p)~~(q)~~ A representative from a municipal police department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Chiefs of Police;
- (q)~~(r)~~ A representative from a local fire department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Fire Chiefs;
- (r)~~(s)~~ A representative from a county sheriff's department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Sheriffs' Association;
- (s)~~(t)~~ A representative from a local Emergency Medical Services agency to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Board of Emergency Medical Services; and
- (t)~~(u)~~ A representative from a local 911 dispatch center to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Chapter of the National Emergency Number Association/Association of Public Safety Communications Officials.
- (6) Appointed members of the committee shall serve for a two (2) year term. Members who serve by virtue of an office shall serve on the committee while they hold that office.
- (7) The committee shall meet quarterly, or as often as necessary for the conduct of its business. A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at committee meetings.
- (8) The committee shall be attached to the Commonwealth Office of Technology for administrative purposes only. Members shall not be paid and shall not be reimbursed for travel expenses.
- (9) The Public Safety Working Group is hereby created for the primary purpose of fostering cooperation, planning, and development of the public safety frequency spectrum as regulated by the Federal Communications Commission, including the 700 MHz public safety band. The group shall endeavor to bring about a seamless, coordinated, and integrated public safety communications network for the safe, effective, and efficient protection of life and property. The Public Safety Working Group membership and other working group memberships deemed necessary shall be appointed by the chair of the Kentucky Wireless Interoperability Executive Committee.
- (10) The committee may establish additional working groups as determined by the committee.

➔Section 13. KRS 11.517 is repealed, reenacted as a new section of KRS Chapter 42, and amended to read as follows:

- (1) The *Kentucky Geospatial Board's*~~{Geographic Information Advisory Council's}~~ duties shall include the following:
- (a) **Recommending**~~{Overseeing}~~ the development and adoption of policies and procedures related to geographic information and geographic information systems;
- (b) **Providing input and recommendations for**~~{Overseeing}~~ the development of a strategy for the **maintenance**~~{implementation}~~ and funding of a statewide base map and geographic information system;
- (c) ~~{Overseeing the development and }~~Recommending standards on geographic information and geographic information systems for inclusion in the statewide architecture;
- (d) **Contributing to**~~{Overseeing}~~ the development and delivery of a statewide geographic information plan~~{ and annually reporting to the Governor, the General Assembly, the Judicial Branch, and the executive director of the Commonwealth Office of Technology}~~;
- (e) ~~{Overseeing the development of the geographic information systems training and education plan}~~;
- (f) ~~Overseeing the assessment of state agency plans for geographic information systems standards compliance}~~;
- (g) ~~{Overseeing the development of operating policies and procedures for the management of the board}~~~~{council}~~ and any standing or ad hoc committees and associated advisory groups; **and**
- (f)~~(h)~~ Promoting collaboration and the sharing of data and data development, as well as other aspects of geographic information systems~~{; and}~~

~~(1) Overseeing the implementation of a pilot project to study the advantages and resources of geographic information system technology.~~

- (2) The Division of Geographic Information shall provide necessary staff support services to the **board**~~{council}~~. All cabinets, departments, divisions, agencies, and officers of the Commonwealth shall furnish the **board**~~{council}~~ necessary assistance, resources, information, records, or advice as it may require to fulfill its duties.

➔Section 14. KRS 11.518 is repealed and reenacted as a new section of KRS Chapter 42 to read as follows:

- (1) All entities in Kentucky that create or purchase digital ortho-rectified aerial imagery, remotely sensed imagery, LiDAR, digital elevation models, or any other form of nonlicensed raster-based datasets of locations in Kentucky using public funds, in whole or in part, shall provide a copy of the information to the Commonwealth Office of Technology, Division of Geographic Information, without cost, in order to allow the Commonwealth Office of Technology to effectively discharge its statutory responsibility to maintain an accurate and complete central statewide geographic information clearinghouse for official state use. The imagery provided to the Commonwealth Office of Technology shall be added to Kentucky's secure Geospatial Data Warehouse for official government use only.
- (2) Subsection (1) of this section shall not apply to roads, land parcels, structure locations, or other vector-based datasets acquired with public funding.
- (3) The Commonwealth Office of Technology shall not disclose to the general public or make available for distribution, download, or purchase any data that an entity providing data under subsection (1) of this section has requested remain confidential.

➔Section 15. KRS 11.520 is repealed and reenacted as a new section of KRS Chapter 42 to read as follows:

- (1) To the extent funds are made available, the Commonwealth Office of Technology shall establish a statewide planning and mapping system for public buildings in this state for use by response agencies who are called to respond to an act of terrorism or an emergency.
- (2) The statewide planning and mapping system for public buildings shall include:
- (a) Floor plans, fire protection information, building evacuation plans, utility information, known hazards, and information on how to contact emergency personnel;
  - (b) The manner by which the information required by paragraph (a) of this subsection shall be transferred to the system from state agencies and the local political subdivisions who participate in the system;
  - (c) Standards for the software that shall be used by state agencies and local political subdivisions that participate in the system;
  - (d) Conditions for use of the system by response agencies;
  - (e) Guidelines for:
    1. The accessibility and confidentiality of information contained within the system; and
    2. The incorporation, in connection with the use of the system, of the items described in subsection (3)(b) of this section;
  - (f) In accordance with information obtained by the Kentucky Office of Homeland Security, a priority for the distribution of any money that may be available for state agencies and political subdivisions to participate in the system; and
  - (g) Guidelines recommended by the Division of Emergency Management for the training of persons employed by the response agencies concerning the use of the system.
- (3) To the extent money is available, state agencies and political subdivisions shall:
- (a) Participate in the statewide planning and mapping system; and
  - (b) Incorporate into their use of the system, without limitation:
    1. Evacuation routes and strategies for evacuation;
    2. Alarms and other signals or means of notification;

3. Plans for remaining inside a building, room, structure, or other location during an emergency when egress may be impossible or when egress may present a more substantial risk than remaining inside; and
4. Training and strategies for prevention in connection with attacks involving violence.

If a state agency or political subdivision uses its own planning and mapping system before the Commonwealth Office of Technology establishes a statewide planning and mapping system, the state agency or political subdivision may continue to use its system unless money is made available for the state agency or political subdivision to update or modify its system as necessary for inclusion in the statewide system.

- (4) The Commonwealth Office of Technology:
  - (a) Shall pursue any money that may be available from the federal government for the development and operation of a statewide planning and mapping system for public buildings, and for the distribution of grants to state agencies and political subdivisions that participate in the system; and
  - (b) May accept gifts, grants, and contributions for the development and operation of a statewide planning and mapping system, and for the distribution of grants to the state agencies and political subdivisions that participate in the system.
- (5) Each state agency and political subdivision that participates in the system shall, on or before July 1, 2007, and on or before July 1 of each year thereafter, submit to the Commonwealth Office of Technology a progress report setting forth, in accordance with regulations promulgated by the Commonwealth Office of Technology, the experience of the agency or political subdivision with respect to its participation in the system. The Commonwealth Office of Technology shall receive and process the progress reports, and provide a summarized overview of the system to the Legislative Research Commission on or before October 1, 2007, and on or before October 1 of each year thereafter.

➔Section 16. KRS 42.066 is repealed and reenacted as a new section of KRS Chapter 42 to read as follows:

- (1) The Division of Occupations and Professions shall provide administrative services, technical assistance, and advice to the following boards and commissions at the request of the individual boards or commissions, all of which maintain their identity and their full authority for making policy decisions in the fields that they regulate: the State Board of Accountancy, the Kentucky Board of Architects, the Kentucky Board of Barbering, the Kentucky Board of Hairdressers and Cosmetologists, the State Board of Podiatry, the Kentucky State Board of Chiropractic Examiners, the Kentucky Board of Dentistry, the State Board of Embalmers and Funeral Directors, the State Board of Registration for Professional Engineers and Land Surveyors, the Kentucky Board of Nursing, the Kentucky Board of Ophthalmic Dispensers, the Kentucky Board of Optometric Examiners, the Kentucky Board of Pharmacy, the State Board of Physical Therapy, the State Board of Examiners of Psychologists, the Kentucky Real Estate Commission, the Kentucky Board of Veterinary Examiners, the Board of Auctioneers, the State Board for Proprietary Education, the State Board of Examiners and Registration of Landscape Architects, the State Board of Medical Licensure, the Board of Speech-Language Pathology and Audiology, the Kentucky Board of Licensure for Nursing Home Administrators, the Kentucky Licensing Board for Specialists in Hearing Instruments, the Kentucky Board of Social Work, and such other boards and commissions as are created to license, certify, register, or otherwise regulate any occupational or professional category.
- (2) To the extent that the division provides administrative services, the respective boards and commissions are relieved of the power and duty to provide the services for themselves. The division shall charge each board or commission a reasonable amount for administrative services provided pursuant to subsection (1) of this section. The division may employ persons previously employed by boards or commissions.
- (3) The division may receive complaints against the conduct of licensees granted licensure by the boards and commissions assigned to the division for administrative purposes. The division shall cause such complaints to be reduced to writing and forwarded to the appropriate board or commission for investigation and a determination of the validity of the complaint. The division shall keep a record of all complaints received by it and forwarded to a board or commission.
- (4) Any board or commission listed in subsection (1) of this section, shall accept personal checks in payment of license renewal fees.

➔Section 17. KRS 11A.060 is amended to read as follows:

- (1) The Executive Branch Ethics Commission is hereby established.
- (2) The commission shall be composed of five (5) members appointed by the Governor.
- (3) Members of the commission shall serve staggered terms of four (4) years. Of the initial members appointed as provided in this section, one (1) member shall serve a term of one (1) year, one (1) member shall serve a term of two (2) years, one (1) member shall serve a term of three (3) years, and two (2) members shall be appointed for terms of four (4) years. Thereafter, all appointments shall be for four (4) years.
- (4) The commission shall elect from its membership a chairman and vice chairman. In the absence of the chairman or in the event of a vacancy in that position, the vice chairman shall serve as chairman.
- (5) A member of the commission shall receive one hundred dollars (\$100) per day for attending meetings and shall be reimbursed for actual and necessary expenses incurred in the performance of duties.
- (6) All members shall be registered voters of the state.
- (7) Members of the commission shall be removed by the Governor for cause only, including substantial neglect of duty and inability to discharge the powers and duties of office.
- (8) A quorum shall consist of three (3) or more members. An affirmative vote of three (3) or more members shall be necessary for commission action.
- (9) The commission shall meet at the call of the chairman or a majority of its members.
- (10) The commission shall be attached to the *Finance and Administration Cabinet*~~[office of the Governor]~~ for administrative purposes only.

➔Section 18. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
4. Department of Law.
  - (a) Attorney General.
5. Department of the Treasury.
  - (a) Treasurer.
6. Department of Agriculture.
  - (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
7. Auditor of Public Accounts.

II. Program cabinets headed by appointed officers:

1. Justice and Public Safety Cabinet:
  - (a) Department of Kentucky State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Office of Drug Control Policy.
  - (g) Office of Legal Services.
  - (h) Office of the Kentucky State Medical Examiner.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Office of Legislative and Intergovernmental Services.
  - (l) Office of Management and Administrative Services.
  - (m) Office of Public Safety Training.
  - (n) Office of Investigations.
  - (o) Department of Kentucky Vehicle Enforcement.
  - (p) Department for Public Advocacy.
2. Education Cabinet:
  - (a) Office of the Secretary.
  - (b) Office of Legal Services.
    1. Client Assistance Program.
  - (c) Office of Communication.
  - (d) Office of Legislative and Intergovernmental Affairs.
  - (e) Office of Budget and Administration.
    1. Division of Human Resources.
    2. Division of Administrative Services.
    3. Division of Technology Services.
  - (f) Board of Directors for the Center for School Safety.
  - (g) Council on Postsecondary Education.
    1. Foundation for Adult Education.
  - (h) Department of Education.
    1. Kentucky Board of Education.
  - (i) Department for Libraries and Archives.
  - (j) Department of Workforce Investment.
    1. Office for the Blind.
    2. Office of Vocational Rehabilitation.
    3. Office of Career and Technical Education.
    4. Office of Employment and Training.

- (k) Foundation for Workforce Development.
  - (l) Kentucky Office for the Blind State Rehabilitation Council.
  - (m) Kentucky Technical Education Personnel Board.
  - (n) Kentucky Workforce Investment Board.
  - (o) Statewide Council for Vocational Rehabilitation.
  - (p) Statewide Independent Living Council.
  - (q) Unemployment Insurance Commission.
  - (r) Education Professional Standards Board.
    - 1. Division of Educator Preparation.
    - 2. Division of Certification.
    - 3. Division of Professional Learning and Assessment.
    - 4. Division of Legal Services.
  - (s) Kentucky Commission on the Deaf and Hard of Hearing.
  - (t) Kentucky Educational Television.
  - (u) Kentucky Environmental Education Council.
3. Environmental and Public Protection Cabinet:
- (a) Office of the Secretary.
    - 1. Office of Legislative and Intergovernmental Affairs.
    - 2. Office of Communications and Public Outreach.
    - 3. Office of Regulatory Affairs.
    - 4. Office of Legal Services.
    - 5. Office of Administrative and Information Services.
    - 6. Office of Administrative Hearings.
    - 7. Office of Inspector General.
    - 8. Mine Safety Review Commission.
    - 9. Workers' Compensation Board.
    - 10. Kentucky State Nature Preserves Commission.
    - 11. Kentucky Environmental Quality Commission.
    - 12. Kentucky Occupational Safety and Health Review Commission.
  - (b) Department for Environmental Protection.
    - 1. Office of the Commissioner.
    - 2. Division of Air Quality.
    - 3. Division of Water.
    - 4. Division of Environmental Services.
    - 5. Division of Waste Management.
    - 6. Division of Enforcement.
    - 7. Division of Compliance Assistance.
  - (c) Department for Natural Resources.

1. Office of the Commissioner.
  2. Office of Technical and Administrative Support.
  3. Division of Mine Permits.
  4. Division of Mine Reclamation and Enforcement.
  5. Division of Abandoned Mine Lands.
  6. Division of Oil and Gas Conservation.
  7. Office of Mine Safety and Licensing.
  8. Division of Forestry.
  9. Division of Conservation.
- (d) Department of Public Protection.
1. Office of the Commissioner.
  2. Division of Administrative Services.
  3. Crime Victims Compensation Board.
  4. Board of Claims.
  5. Board of Tax Appeals.
  6. Kentucky Boxing and Wrestling Authority.
  7. Kentucky Horse Racing Authority.
  8. Kentucky Public Service Commission.
  9. Office of Alcoholic Beverage Control.
  10. Office of Charitable Gaming.
  11. Office of Financial Institutions.
  12. Office of Housing, Buildings and Construction.
  13. Office of Insurance.
- (e) Department of Labor.
1. Office of the Commissioner.
  2. Office of Occupational Safety and Health.
  3. Office of Labor Management Relations and Mediation.
  4. Office of Workplace Standards.
  5. Office of Workers' Claims.
  6. Workers' Compensation Funding Commission.
  7. Kentucky Labor Management Advisory Council.
  8. Occupational Safety and Health Standards Board.
  9. Prevailing Wage Review Board.
  10. Kentucky Employees Insurance Association.
  11. Apprenticeship and Training Council.
  12. State Labor Relations Board.
  13. Workers' Compensation Advisory Council.
  14. Workers' Compensation Nominating Commission.

15. Employers' Mutual Insurance Authority.
  16. Division of Administrative Services.
4. Transportation Cabinet:
- (a) Department of Highways.
    1. Office of Program Planning and Management.
    2. Office of Project Development.
    3. Office of Construction and Operations.
    4. Office of Intermodal Programs.
    5. Highway District Offices One through Twelve.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Aviation.
  - (e) Department of Intergovernmental Programs.
    1. Office of Transportation Enhancement Programs.
    2. Office of Rural and Secondary Roads.
  - (f) Office of the Secretary.
    1. Office of Legislative and Intergovernmental Affairs.
    2. Office of Public Affairs.
    3. Office of Transportation Delivery.
    4. Office for Business and Occupational Development.
    5. Office of Budget and Fiscal Management.
    6. Office of Legal Services.
    7. Office of Inspector General.
    8. Office of the Transportation Operations Center.
    9. Office of Personnel Management.
5. Cabinet for Economic Development:
- (a) Office of Administration and Support.
  - (b) Department for New Business Development.
  - (c) Department of Financial Incentives.
  - (d) Department for Existing Business Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
  - (g) Office of Research and Information Technology.
  - (h) Department of Commercialization and Innovation.
  - (i) Office of Legal Services.
  - (j) Commission on Small Business Advocacy.
6. Cabinet for Health and Family Services:
- (a) Department for Public Health.

- (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission for Children with Special Health Care Needs.
  - (e) Office of Health Policy.
  - (f) Office of the Secretary.
  - (g) Office of Legal Services.
  - (h) Office of Inspector General.
  - (i) Office of Legislative and Public Affairs.
  - (j) Department for Community Based Services.
  - (k) Department for Disability Determination Services.
  - (l) Office of the Ombudsman.
  - (m) Department for Human Support Services.
  - (n) Kentucky Commission on Community Volunteerism and Service.
  - (o) Office of Fiscal Services.
  - (p) Office of Human Resource Management.
  - (q) Office of Technology.
  - (r) Office of Contract Oversight.
  - (s) Governor's Office of Wellness and Physical Activity.
  - (t) Department for Aging and Independent Living.
7. Finance and Administration Cabinet:
- (a) Office of General Counsel.
  - (b) Office of the Controller.
  - (c) Office of Administrative Services.
  - (d) Office of Public Information.
  - (e) ***Office of Policy and Audit.***
  - (f) Department for Facilities and Support Services.
  - ~~(g)(f)~~ Department of Revenue.
  - ~~(h)(g)~~ Commonwealth Office of Technology.
  - ~~(i)(h)~~ State Property and Buildings Commission.
  - ~~{(i) — Kentucky Savings Bond Authority.}~~
  - (j) Office of Equal Employment Opportunity and Contract Compliance.
  - (k) Kentucky Employees Retirement Systems.
  - (l) Commonwealth Credit Union.
  - (m) State Investment Commission.
  - (n) Kentucky Housing Corporation.
  - (o) Kentucky Local Correctional Facilities Construction Authority.
  - (p) Kentucky Turnpike Authority.
  - (q) Historic Properties Advisory Commission.

- (r) Kentucky Tobacco Settlement Trust Corporation.
  - (s) ~~{State Board for Proprietary Education.~~
  - ~~(t) —~~ Kentucky Higher Education Assistance Authority.
  - ~~(t){(u)}~~ Kentucky River Authority.
  - ~~(u){(v)}~~ Kentucky Teachers' Retirement System Board of Trustees.
  - (v) ***Executive Branch Ethics Commission.***
8. Commerce Cabinet:
- (a) Department of Tourism.
    - (1) Division of Tourism Services.
    - (2) Division of Marketing and Advertising.
    - (3) Division of Parks Marketing.
  - (b) Kentucky Department of Parks.
    - (1) Division of Information Technology.
    - (2) Division of Personnel and Payroll.
    - (3) Division of Financial Operations.
    - (4) Division of Facilities Management.
    - (5) Division of Facilities Maintenance.
    - (6) Division of Customer Services.
    - (7) Division of Recreation.
    - (8) Division of Golf Courses.
    - (9) Division of Food Services.
    - (10) Division of Rangers.
    - (11) Division of Eastern Parks.
    - (12) Division of Southern Parks.
    - (13) Division of Western Parks.
  - (c) Department of Fish and Wildlife Resources.
    - (1) Division of Law Enforcement.
    - (2) Division of Administrative Services.
    - (3) Division of Engineering.
    - (4) Division of Fisheries.
    - (5) Division of Information and Education.
    - (6) Division of Wildlife.
    - (7) Division of Public Affairs.
  - (d) Kentucky Horse Park.
    - (1) Division of Support Services.
    - (2) Division of Buildings and Grounds.
    - (3) Division of Operational Services.
  - (e) Kentucky State Fair Board.

- (1) Division of Expositions and Admission.
  - (2) Division of Kentucky Fair and Exposition Center Operations.
  - (3) Division of Commonwealth Convention Center.
  - (4) Division of Public Relations and Media.
  - (5) Division of Administrative Services.
  - (6) Division of Personnel Management and Staff Development.
  - (7) Division of Sales.
  - (8) Division of Security and Traffic Control.
  - (f) Office of the Secretary.
  - (g) Office of Finance and Administration.
  - (h) Office of Legal Affairs.
  - (i) Office of Intergovernmental Affairs.
  - (j) Office of Human Resources.
  - (k) Office of Public Affairs and Constituent Services.
  - (l) Office of Information Technology.
  - (m) Office of the Kentucky Sports Authority.
    - (1) Kentucky Sports Authority Board.
  - (n) Office of Creative Services.
  - (o) Office of Capital Plaza Operations.
  - (p) Office of Arts and Cultural Heritage.
  - (q) Kentucky African-American Heritage Commission.
  - (r) Kentucky Foundation for the Arts.
  - (s) Kentucky Humanities Council.
  - (t) Kentucky Heritage Council.
  - (u) Kentucky Arts Council.
  - (v) Kentucky Historical Society.
    - (1) Division of Museums.
    - (2) Division of Oral History and Educational Outreach.
    - (3) Division of Research and Publications.
    - (4) Division of Administration.
  - (w) Kentucky Center for the Arts.
    - (1) Division of Governor's School for the Arts.
  - (x) Kentucky Artisans Center at Berea.
  - (y) Martin Luther King Commission.
  - (z) Northern Kentucky Convention Center.
  - (aa) Eastern Kentucky Exposition Center.
9. Personnel Cabinet:
- (a) Office of the Secretary.

- (b) Department for Personnel Administration.
- (c) Office for Employee Relations.
- (d) Kentucky Public Employees Deferred Compensation Authority.
- (e) Office of Administrative Services.
- (f) Office of Legal Services.
- (g) Office of Government Training.
- (h) Department for Employee Insurance.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Governor's Office for Local Development.
- 3. Kentucky Commission on Human Rights.
- 4. Kentucky Commission on Women.
- 5. Department of Veterans' Affairs.
- 6. Kentucky Commission on Military Affairs.
- 7. Office of Minority Empowerment.
- 8. Governor's Council on Wellness and Physical Activity.

➔Section 19. KRS 42.0145 is amended to read as follows:

- (1) The Office of the Secretary of the Finance and Administration Cabinet shall consist of the Office of General Counsel, Office of Administrative Services, Office of Public Information, *Office of Policy and Audit*, and Office of Equal Employment Opportunity and Contract Compliance, each headed by an executive director who shall be appointed by the secretary with the approval of the Governor. The Office of the Secretary shall include a deputy secretary who shall be appointed by the secretary with the approval of the Governor. The deputy secretary shall be responsible to and have such authority to sign for the secretary as the secretary designates in writing.
- (2) The secretary may organize the office into such additional administrative units as he deems necessary to perform the functions and fulfill the duties of the cabinet, subject to the provisions of KRS Chapter 12.
- (3) All appointments under this chapter to positions not in the classified service shall be made pursuant to KRS 12.050, and such appointees shall be major assistants to the secretary and shall assist in the development of policy.

➔Section 20. KRS 42.016 is amended to read as follows:

The following corporate bodies and instrumentalities of the Commonwealth shall be attached to the Office of the Secretary for administrative purposes and staff services:

- (1) State Property and Buildings Commission;
- (2) ~~[(Kentucky Savings Bond Authority;~~
- ~~(3) —]Kentucky Turnpike Authority;~~
- (3)~~[(4)]~~ State Investment Commission;
- (4)~~[(5)]~~ Kentucky Housing Corporation;
- (5)~~[(6)]~~ Kentucky Tobacco Settlement Trust Corporation;~~[-and]~~
- (6)~~[(7)]~~ Kentucky River Authority; *and*
- (7) *Executive Branch Ethics Commission.*

➔Section 21. KRS 42.017 is amended to read as follows:

- (1) The Office of General Counsel established within the Office of the Secretary by KRS 42.0145 shall be responsible for the coordination and provision of legal services for the cabinet and for other functions and duties as the secretary may assign relating to the performance of the cabinet's legal services.
- (2) The Office of General Counsel shall be headed by an executive director who shall function as the general counsel. The executive director shall be appointed in accordance with KRS 12.210 and shall report to the secretary. The Attorney General, on request of the secretary, may designate attorneys in the Office of General Counsel as assistant attorneys general as provided in KRS 15.105.
- (3) The Office of General Counsel shall consist of two (2) offices, each of which shall provide legal services for its respective offices and departments, as follows:
  - (a) Office of Legal Services for Finance and Technology, headed by an executive director and composed of organizational entities deemed appropriate by the secretary of the Finance and Administration Cabinet; and
  - (b) Office of Legal Services for Revenue, headed by an executive director, including ~~the Division of Protest Resolution and any additional~~ organizational entities deemed appropriate by the secretary of the Finance and Administration Cabinet.

➔Section 22. KRS 42.0171 is amended to read as follows:

- (1) The Office of Administrative Services established in KRS 42.0145 shall be generally responsible for all internal administrative and human resource functions of the cabinet, including but not limited to providing administrative assistance; managing and preparing the cabinet's budget; performing general accounting; managing fiscal, personnel, and payroll functions of the cabinet; providing statewide postal and printing services; providing administrative support to boards and commissions; and performing any additional administrative functions and duties the secretary may assign.
- (2) There shall be established in the Office of Administrative Services the Division of Budget and Planning, the Division of Human Resources, the Division of Administrative Support Services, ~~the Division of Occupations and Professions,~~ the Division of Postal Services, and the Division of *Fleet Management* ~~Printing Services~~, each of which shall be headed by a division director appointed by the secretary of the Finance and Administration Cabinet, subject to the approval of the Governor, and who shall be responsible to the executive director of the Office of Administrative Services. There may be, if needed, sections assigned to specific areas of work, responsible directly to the executive director of the Office of Administrative Services.

➔Section 23. KRS 42.0172 is amended to read as follows:

- ~~(1) The Division of Printing Services shall be responsible for the printing and duplicating needs of state agencies, as designated by the Finance and Administration Cabinet.~~
- ~~(2)~~ The Division of Postal Services shall operate the centralized postal services for executive branch agencies as set forth in KRS 12.020. The division shall operate at a central location with additional locations necessary to maintain and improve service levels.

➔Section 24. KRS 42.0201 is amended to read as follows:

- (1) There is created within the Finance and Administration Cabinet the Office of the Controller.
- (2) The Office of the Controller shall be headed by an executive director appointed by the secretary of the Finance and Administration Cabinet with the approval of the Governor. The executive director shall function as the state controller, who shall be a person qualified by education and experience for the position and held in high professional esteem in the accounting community.
- (3) The state controller shall be the Commonwealth's chief accounting officer and shall be responsible for all aspects of accounting policies and procedures, financial accounting systems, and internal accounting control policies and procedures. The Office of the Controller shall establish guidelines for state personnel administration on issues relating to paycheck distribution dates, assignment of data elements to accurately report labor costs, assignment and tracking of actual expenditures by code, and coverage issues relating to Social Security and Medicare.

- (4) The state controller; the executive director of the Office of Financial Management, Finance and Administration Cabinet; and the state budget director designated under KRS 11.068 shall develop and maintain the Commonwealth's strategic financial management program.
- (5) Executive directors and division directors appointed under this section shall be appointed by the secretary with the approval of the Governor.
- (6) There are established in the Office of the Controller the following organizational entities:
- (a) ~~The Office of Policy and Audit, which shall be headed by an executive director and shall have the duties and responsibilities established in KRS 42.065 and 42.0651;~~
- ~~(b)~~ ~~The Office of Financial Management, which shall be headed by an executive director, ~~and~~ shall have the duties and responsibilities established in KRS 42.410, **and shall serve as administrative staff to the Turnpike Authority of Kentucky. The executive director shall serve as secretary to the authority;**~~
- ~~(b)~~~~(c)~~ The Office of Material and Procurement Services, which shall be headed by an executive director and shall have the duties established in KRS 42.024;
- ~~(d)~~ ~~The Office of Customer Resource Center, which shall be headed by an executive director and shall be responsible for providing a help desk for users of state government's financial and procurement system, including state employee users and vendors and payees of the Commonwealth who do, or would like to do, business with the state; training state employees in the use of state government's financial and procurement system; and assisting cabinet entities in improving the quality of their products and processes;~~
- ~~(c)~~~~(e)~~ The Division of Local Government Services, which shall be headed by a division director and shall be responsible for:
1. Providing property valuation administrators with fiscal, personnel, payroll, training, and other essential administrative support services;
  2. Overseeing Kentucky's Social Security coverage program, including but not limited to all aspects of FICA wage reporting for state government and the Commonwealth's Social Security coverage agreement;
  3. Serving as liaison between local governments and the federal Internal Revenue Service and Social Security Administration;
  4. Serving as the payroll and fiscal officer for the sheriff and clerk in counties over seventy thousand (70,000) in population, disbursing various reimbursements and expenditures to local governments and serving as liaison and conduit for all court fees associated with report of state money through the Circuit Courts;
  5. Directing the federal employment tax program for state employees; and
  6. Performing state government's duties relating to the county fee system for local entities;
- ~~(d)~~~~(f)~~ The ~~Office~~~~Division~~ of Statewide Accounting Services, headed by **an executive**~~a division~~ director appointed by the secretary of the Finance and Administration Cabinet, subject to the approval of the Governor. The **executive** director shall report directly to the state controller. The ~~office~~~~division~~ shall perform financial record keeping functions at the state controller's direction, and shall be responsible for the performance of the cabinet's functions outlined in KRS 45.305, 48.800, and other related statutes. **There is established within the Office of Statewide Accounting Services the Division of Customer Resource Center which shall be headed by a division director appointed by the secretary pursuant to KRS 12.050 and who shall report to the executive director of the Office of Statewide Accounting Services. The division shall be responsible for:**
1. **Providing a help desk for users of state government's financial and procurement system, including state employee users and vendors and payees of the Commonwealth who do, or would like to do, business with the state;**
  2. **Training state employees in the use of state government's financial and procurement system; and**
  3. **Assisting cabinet entities in improving the quality of their products and processes; and**

- (e) *The Division of State Risk and Insurance Services, headed by a division director appointed by the secretary of the Finance and Administration Cabinet, subject to the approval of the Governor. The director shall report directly to the state controller. The division shall be responsible for procuring insurance for all state-owned and state-operated facilities and vehicles.*

➔Section 25. KRS 42.065 is amended to read as follows:

- (1) The Office of Policy and Audit established in the Office of the ~~Secretary~~~~[Controller]~~ in *Section 19 of this Act*~~[KRS 42.0201]~~ may, with the approval of the secretary of the Finance and Administration Cabinet, conduct any internal audit, investigation, or management review in the Finance and Administration Cabinet related to the secretary's duties and responsibilities as chief financial officer of the Commonwealth pursuant to KRS 42.012.
- (2) When it is necessary to complete an internal audit, investigation, or management review in the Finance and Administration Cabinet, with the written approval of the secretary of the Finance and Administration Cabinet, the Office of Policy and Audit shall have access during business hours to all books, reports, papers, and accounts in the office or under the custody or control of any budget unit, or of any other program cabinet, department, or agency under the authority and direction of the Governor.

➔Section 26. KRS 42.425 is amended to read as follows:

- (1) (a) The Department for Facilities and Support Services established in the Finance and Administration Cabinet by KRS 42.014 shall be generally responsible for performance of the cabinet's functions and duties as outlined in KRS Chapters 45, 45A, and 56 with relation to the management and administration of the State Capital Construction Program, including without limitation to the generality thereof the procurement of necessary consulting services related to capital construction and building renovation projects, construction services, and supervision of building construction projects, and for the maintenance and operation of the state government's real property management functions and physical plant management functions.
- (b) The department shall be headed by a commissioner appointed by the secretary of the Finance and Administration Cabinet.
- (c) The department shall have the primary responsibility for developing and implementing policies applicable to all state agencies to ensure effective planning for and efficient operation of state office buildings, and shall provide appropriate assistance regarding the planning and efficient operation of all state facilities.
- (d) The department shall be divided for administrative and operational purposes into a:
1. *Office of Facility Development and Efficiency, headed by an executive director appointed by the secretary in accordance with KRS 12.050. The office shall analyze and monitor guaranteed energy savings performance contracts for state agencies. The office shall include:*
    - a. *The Division of Engineering and Contract Administration; and*
    - b. *The Division of Facility Efficiency*~~[Division of Engineering and Contract Administration];~~
  2. Office of Building and Mechanical Services, headed by an executive director appointed by the secretary in accordance with KRS 12.050. The office shall provide building and grounds maintenance, mechanical maintenance, and electronic security services to state-owned facilities across the Commonwealth and shall consist of the Division of Building Services and the Division of Mechanical Services;
  3. Division of Real Properties;
  4. Division of Historic Properties; and
  5. Division of Surplus Properties.
- (e) Each division shall be headed by a division director appointed by the secretary, subject to the approval of the Governor, and responsible to the commissioner of the Department for Facilities and Support Services. The commissioner shall provide for the distribution of the department's work among the divisions within the department.

- (f) The Division of Surplus Properties shall be responsible for the disposition of all personal property of the state declared surplus. The division shall be the single state agency of the Commonwealth of Kentucky that may receive, warehouse, and distribute surplus property under the Federal Property and Administrative Services Act of 1949, as amended, and any other federal law relating to the disposal of surplus federal property to the states and political subdivisions within the states. The division shall comply with federal laws and regulations in the administration of surplus property received through federal agencies. The division director may promulgate administrative regulations in accordance with KRS Chapter 13A as necessary to comply with minimum standards established by federal laws and regulations governing disposal of surplus federal property and to implement the fee or service charge provisions contained in this paragraph. The division director may establish, charge, and collect from donees of federal surplus property a fair and reasonable fee or service charge to defray the cost of operating the surplus property disposal program. The fees shall be deposited in a trust and agency account in the State Treasury to the credit of the Division of Surplus Properties.
- (2) In conjunction with the responsibilities listed in subsection (1) of this section, the Department for Facilities and Support Services shall have the following duties:
- (a) Establish policies to ensure efficient utilization of state property by:
1. Requiring the development of guidelines which set forth space standards and criteria for determining the space needs of state agencies, and maintaining an inventory which tracks the agencies' compliance with those standards and criteria; and
  2. Requiring certification of compliance, or justification for exceptions, as a criterion for approval of additional space;
- (b) Establish policies to ensure effective planning for state facilities by:
1. Developing a long-range plan for the Frankfort area, with priority on reducing dependency on leased space and encouraging the consolidation of agencies' central offices into single locations, and shared offices for agencies with similar functions; and
  2. Developing long-range plans for housing state agencies in metropolitan areas, with priority on centralization of services and coordination of service delivery systems; and
  3. Encouraging executive branch agencies to expand long-range planning efforts, consistent with the policies of the Capital Planning Advisory Board; and
  4. Supporting long-range planning for a statewide information technology infrastructure to more efficiently deliver state government services;
- (c) Establish priorities to allow least-cost financing of state facilities by:
1. Initiating policies which authorize the state to use innovative methods to lease, purchase, or construct necessary facilities; and
  2. Requiring cost analysis to determine the most effective method of meeting space needs, with consideration for ongoing operations and initial acquisition; and
- (d) Implement and maintain a comprehensive real property and facilities management database to include all state facilities and land owned or leased by the executive branch agencies, including any postsecondary institution. All state agencies and postsecondary institutions shall work cooperatively with the Department for Facilities and Support Services to implement and maintain the database.
- (3) The Department for Facilities and Support Services shall develop plans for the placement of computing and communications equipment in all facilities owned or leased by state government. As part of this planning process, the department shall:
- (a) Provide adequate site preparation in all state-owned facilities and require the same of those from whom the state leases space as part of the lease agreement;
- (b) Fund a minimum level of site preparation for computing and communications in each new state-owned facility; and
- (c) As new office sites are developed, or existing ones undergo renovation, consider the placement of shareable high-cost, high-value facilities at strategic locations throughout the state. These facilities may

include video teleconference centers, optical scanning and storage services, and gateways to high-speed communication networks.

➔Section 27. KRS 45A.065 is amended to read as follows:

- (1) ~~{The secretary of the Finance and Administration Cabinet may establish a procurement advisory council which shall meet at least once a year for the discussion of problems and recommendations for improvement of the procurement process. When requested by the secretary, the procurement advisory council shall conduct studies, research, analyses, and make reports and recommendations with respect to such subjects or matters within the jurisdiction of the secretary as may be prescribed. The procurement advisory council may consist of such qualified representatives of government, industry, educational institutions, and the general public as the secretary may deem desirable. Members shall be reimbursed for expenses incurred in the performance of council duties subject to the provisions of KRS 45.101.~~
- (2) ~~{The secretary of the Finance and Administration Cabinet may appoint advisory councils to assist him with respect to specifications and procurement in specific commodity areas as well as other matters within his authority. Advisory council members may consist of *such qualified representatives of government, industry, educational institutions, and the general public as the secretary may deem desirable. Members shall be reimbursed for expenses incurred in the performance of council duties subject to the provisions of KRS 45.101*[various qualified representatives as described in subsection (1) of this section, as may be appropriate for the designated task or project. Compensation shall be provided as in subsection (1) of this section].~~
- (2){(3)} The secretary may also establish and maintain, either alone or in cooperation with other states, the federal government, municipalities, or other units of local government, a procurement institute for the purpose of disseminating information concerning state procurement and for training and educating officials and other persons in procurement, including persons not employed by the Commonwealth.

➔Section 28. KRS 45A.182 is amended to read as follows:

- (1) When a capital project is to be constructed utilizing the design-build method in accordance with KRS 45A.180, a process parallel to the selection committee procedures established in KRS 45A.810 shall apply when procuring a design-build team and shall incorporate the following:
- (a) The evaluation process may include a multiple phased proposal that is based on qualifications, experience, technical requirements, guaranteed maximum price, and other criteria as set forth in the request for proposal. The guaranteed maximum price component shall be submitted by the offeror independently of other documents and shall be held by the *executive* director of the *Office of Facility Development and Efficiency*~~[Division of Engineering and Contract Administration]~~.
  - (b) Each evaluator shall independently score each phase and indicate a total score for all evaluation factors as set forth in the request for proposal.
  - (c) Final phase proposals from the offerors on the short list shall be evaluated and scored by the evaluation committee members who shall not have knowledge of the guaranteed maximum price component. Each evaluator shall independently score the final phase proposals and indicate a total score. A total average score shall be calculated for each offeror. Then each offeror's respective score for the guaranteed maximum price shall be added. The offeror with the highest point total in the final phase shall receive the contract award unless the guaranteed maximum price proposal is in excess of the authorized budget. If two (2) or more of the offerors achieve the same highest point total at the end of the final phase scoring, the purchasing officer shall request best-and-final proposals from each offeror.
  - (d) If the guaranteed maximum price of the offeror with the highest point total in the final phase is greater than the amount of funds identified in the request for proposal, then competitive negotiations may be conducted with the offerors under the following restrictions:
    1. If discussion pertaining to the revision of the specifications or quantities are held, the offerors shall be afforded an opportunity to take part in such discussions.
    2. Written revisions of the specifications shall be made available to each of the offerors and shall provide for an expeditious response.
    3. Information derived from revised maximum guaranteed price proposals shall not be disclosed to competing offerors.

- (2) A request for proposal or other solicitation may be canceled, or all proposals may be rejected, if it is determined in writing that such action is taken in the best interest of the Commonwealth and approved by the purchasing officer.

➔Section 29. KRS 48.005 is amended to read as follows:

- (1) The General Assembly hereby finds and declares that:
- (a) Public accountability for funds or other assets recovered in a legal action by or on behalf of the general public, the Commonwealth, or its duly elected statewide constitutional officers is appropriate and required, whether the character of the assets or funds recovered is public or private;
  - (b) Accountability for assets or funds recovered by duly elected statewide constitutional officers is essential to the public trust, and is even more critical when that officer was a party to the action that resulted in the recovery by virtue of the public office he or she holds;
  - (c) Public accountability demands the applicability of the Kentucky Open Records Law, KRS 61.870 to 61.884, and the Kentucky Open Meetings Law, KRS 61.805 to 61.850, so that the actions of individuals or agencies who are charged with the administration of funds or other assets are conducted in full view, and are open to public scrutiny;
  - ~~(d) The General Assembly recognizes that the Attorney General of the Commonwealth of Kentucky has filed or been a party to actions by virtue of the public office he holds, and has recovered certain assets or funds of approximately forty five million dollars (\$45,000,000), plus interest, for or on behalf of the citizens of the Commonwealth in the cases of Commonwealth of Kentucky, ex rel., Attorney General, Albert B. Chandler, III v. Anthem Insurance Companies, Inc., Southeastern Group, Inc., Southeastern United Medigroup, Inc., Franklin Circuit Court, Division I, Civil Action No. 97 CI 01566, and Southeastern United Medigroup, Inc., Southeastern Group, Inc., and Anthem Insurance Companies, Inc., v. Commonwealth of Kentucky, Department of Insurance, Franklin Circuit Court, Division II, Civil Action No. 97 CI 00405;~~
  - ~~(e) The terms of the settlement of those actions referenced in subsection (1)(d) of this section serve a public purpose and require that the proceeds of settlement be used "to address the unmet health care needs of Kentucky citizens";~~
  - ~~(f) In accordance with the terms of the settlement referenced in subsection (1)(d) of this section, a foundation has been or is to be formed and appointments to that foundation made after receiving recommendations from an advisory board whose appointments will be made from nominees of the Attorney General;~~
  - ~~(g) While it may be important that, in certain circumstances, funds or assets received retain their character, identity, and purpose, it is also important that the process by which funds are administered and the individuals named to serve on the advisory board and the foundation in the settlement referenced in subsection (1)(d) of this section be open to public scrutiny and be required to make reports and be accountable to the public; and~~
  - ~~(d){(h)}~~ The power to appropriate funds for public purposes is solely within the purview of the legislative branch of government, and the General Assembly, as a steward of the budgetary process, shall take steps to assure that future settlements are handled in a manner that assures maximum accountability to the citizens of the Commonwealth and their duly elected legislative representatives.
- (2) Therefore, any other provision of the common law or statutory law to the contrary notwithstanding:
- (a) ~~{The provisions of subsection (3) of this section shall apply to the settlement referenced in subsection (1)(d) of this section, and to the advisory board, corporation, organization, foundation, charitable trust, constructive trust, board, commission, or entity, created by court order or otherwise, to administer the settlement proceeds to provide for the "unmet health care needs of Kentucky citizens"; and~~
  - ~~(b) Except for the settlement referenced in subsection (1)(d) of this section, }~~The provisions of subsection ~~(3){(4)}~~ of this section shall apply whenever the Attorney General or other duly elected statewide constitutional officer is a party or has entered his appearance in a legal action on behalf of the Commonwealth of Kentucky, including ex rel. or other type actions, and a disposition of that action has resulted in the recovery of funds or assets to be held in trust by the Attorney General or other duly elected statewide constitutional officer or a person, organization, or entity created by the Attorney

General or the Commonwealth, through court action or otherwise, to administer the trust funds or assets, for charitable, eleemosynary, benevolent, educational, or similar public purposes;

~~(b)~~~~(e)~~ Except as otherwise provided in *paragraph*~~[paragraphs]~~ (a)~~[and (b)]~~ of this subsection, the provisions of subsection ~~(4)~~~~(5)~~ of this section shall apply when any funds or assets of any kind or nature whatsoever, including, but not limited to, public funds as defined in KRS 446.010 and private funds or assets are recovered by judgment or settlement of a legal action by or on behalf of the Commonwealth of Kentucky, including ex rel. or other type actions filed by a duly elected statewide constitutional officer under that officer's statutory or common law authority.

~~(3) [The advisory board, corporation, organization, foundation, charitable trust, constructive trust, board, commission, or entity, created by court order or otherwise, in accordance with the settlement outlined in subsection (1)(d) of this section, shall be deemed a public trust, and shall:~~

~~(a) Be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884, and the Kentucky Open Meetings Act, KRS 61.805 to 61.850;~~

~~(b) Be audited on an annual basis by the Auditor of Public Accounts;~~

~~(c) Provide any records, documents, written reports, and audits to the Governor, Auditor of Public Accounts, and the Legislative Research Commission, as may be requested;~~

~~(d) Provide representatives of the organization or entity to testify before any committee of the General Assembly, when requested, concerning the work and financial condition of the organization or entity;~~

~~(e) Encourage the Franklin Circuit Court to authorize the Governor to appoint two (2) at large members to the board of directors of the foundation created by the settlement agreement; and~~

~~(f) Provide written notice of any disbursement of funds or assets to the co chairs of the Interim Joint Committee on Appropriations and Revenue, the secretary of the Finance and Administration Cabinet, and the state controller at least fourteen (14) days prior to making disbursement. Within forty five (45) days after receipt of the notice of disbursement of funds or assets in accordance with this subsection, the Interim Joint Committee on Appropriations and Revenue may hold a hearing on the disbursement. If requested by the Interim Joint Committee on Appropriations and Revenue, members of the advisory board, corporation, organization, foundation, charitable trust, constructive trust, board, commission, or entity making disbursement and the person, organization, or other entity receiving the disbursement shall appear and give testimony concerning the proposed disbursement. Following the hearing, the Interim Joint Committee on Appropriations and Revenue shall make findings concerning whether or not the disbursement:~~

~~1. Is consistent with the nature, character, and purpose for which the funds were recovered; and~~

~~2. Is in the best interest of the Commonwealth.~~

~~— A copy of the findings shall be publicly released and mailed or otherwise delivered to the entity or organization seeking disbursement, the secretary of the Finance and Administration Cabinet, and the state controller.~~

~~(4) Except for the settlement referenced in subsection (1)(d) of this section, ]Whenever the Attorney General or other duly elected statewide constitutional officer is a party to or has entered his appearance in, a legal action on behalf of the Commonwealth of Kentucky, including ex rel. or other type actions, and a disposition of that action has resulted in the recovery of funds or assets to be held in trust by the Attorney General or other duly elected statewide constitutional officer or by a person, organization, or entity created by the Attorney General, or the Commonwealth, through court action or otherwise, to administer the trust funds or assets, for charitable, eleemosynary, benevolent, educational, or similar public purposes, those funds shall be deposited in the State Treasury and the funds or assets administered and disbursed by the *Office of the Controller*~~[Charitable Asset Administration Board created under this section. As used in this section "CAAB" means the Charitable Asset Administration Board.~~~~

~~(a) The CAAB shall consist of the following members, who shall be confirmed by the Senate under KRS 11.160, and who shall serve at the pleasure of the duly elected statewide constitutional officer making the appointment during that constitutional officer's term of office:~~

~~1. Three (3) members to be appointed by the Governor;~~

2. ~~Three (3) members to be appointed by the Attorney General; and~~
  3. ~~Three (3) members to be appointed by the Auditor of Public Accounts.~~
- (b) ~~Each duly elected statewide constitutional officer under paragraph (a) of this subsection shall appoint at least one (1) member who has a background in the administration of charitable, eleemosynary, benevolent, educational, or similar type trust assets, but shall not be currently involved in any activity that would violate the provisions of KRS 11A.040, as they relate to the performance of the appointee's duties on the CAAB.~~
- (c) ~~All appointees to the CAAB shall comply with the provisions of the Executive Branch Code of Ethics found in KRS Chapter 11A.~~
- (d) ~~A vacancy in the membership of the CAAB shall be filled in the same manner and under the same conditions as the initial appointment to the board.~~
- (e) ~~The CAAB shall:~~
1. ~~Be a nonprofit, de jure, quasi-governmental corporation subject to the Kentucky Open Records Law, KRS 61.870 to 61.884, and Kentucky Open Meetings Law, KRS 61.800 to 61.850;~~
  2. ~~Have any and all general corporate, trust, or other powers reasonable or necessary to fulfill the requirements and purposes of the CAAB;~~
  3. ~~Be audited on an annual basis by the Auditor of Public Accounts;~~
  4. ~~Provide any documents, written reports, and audits to the Legislative Research Commission as may be requested; and~~
  5. ~~Provide representatives of the organization or entity to testify before any committee of the Kentucky General Assembly when requested concerning the work and financial condition of the CAAB.~~
- (f) ~~The CAAB shall have full authority over the administration, control, and disbursement of any funds recovered under this subsection. The CAAB shall receive, analyze, administer, disburse, and preserve the identity, character, and nature and the charitable, eleemosynary, benevolent, educational, or similar public purpose of the funds or assets received consistent with this subsection and the authority for administering the funds recovered as set forth in the:~~
1. ~~Articles of incorporation and bylaws of the corporation;~~
  2. ~~Partnership agreement or other business association agreement;~~
  3. ~~Contractual agreement;~~
  4. ~~Governing documents of the public or private foundation;~~
  5. ~~Charitable trust documents;~~
  6. ~~Terms of the constructive trust;~~
  7. ~~Orders of a state or federal court;~~
  8. ~~State or federal law or regulation; or~~
  9. ~~Any other governing documents necessary to properly administer the funds recovered.~~
- (g) ~~The CAAB may hold public hearings, if necessary, concerning the proper administration or disbursement of trust assets received and to be administered under this subsection.~~
- (h) ~~1. After April 21, 2000, all charitable, eleemosynary, benevolent, educational, or similar type trust funds or assets, to which this subsection applies, recovered by way of judgment, settlement, or otherwise, shall be transferred to the CAAB for administration of those funds or assets consistent with their charitable, eleemosynary, benevolent, educational, or similar public purpose and the provisions of this subsection.~~
2. ~~For those legal actions settled prior to April 21, 2000, except for the settlement outlined in subsection (1)(d) of this section to which subsection (3) of this section shall apply, where charitable, eleemosynary, benevolent, educational, or similar type trust funds or assets, are~~

~~recovered by way of judgment or settlement, and to which this subsection would otherwise be applicable, the federal and state courts where those actions are pending are encouraged to transfer any trust funds or assets remaining after administration to the CAAB].~~

- ~~(4)~~~~(5)~~ (a) Any other provision of the common law or statutory law to the contrary notwithstanding, and except as otherwise provided in this section, any funds or assets of any kind or nature whatsoever, including, but not limited to, public funds as defined in KRS 446.010 and private funds or assets when recovered by judgment or settlement of a legal action by or on behalf of the Commonwealth of Kentucky, including ex rel. or other type actions filed by a duly elected statewide constitutional officer under that officer's statutory or common law authority shall be deemed public funds, and shall be deposited into an account maintained by the Finance and Administration Cabinet.
- (b) No funds to which this subsection applies when deposited in an account maintained by the Finance and Administration Cabinet shall be disbursed without a specific legislative appropriation of the deposited funds by the General Assembly while in regular or special legislative session.
- ~~(5)~~~~(6)~~ The common law, including the common law authority of any duly elected statewide constitutional officer, is specifically abrogated to the extent it is inconsistent with the provisions of this section.
- ~~(6)~~~~(7)~~ The provisions of this section shall not apply to actions by or on behalf of the Commonwealth or its duly elected statewide constitutional officers, if the recovery sought and received is for specific individuals identified as parties to the action either by individual Social Security number, other individual identifying number, or by the individual's proper name.
- ~~(7)~~~~(8)~~ Notwithstanding any statute or common law to the contrary, and except as provided in this subsection, an elected statewide constitutional officer or any other state official or agency shall not file or participate as a plaintiff, petitioner, party, intervening party, attorney, or amicus curiae in any litigation challenging the constitutionality of this section. State funds and employee time shall not be expended by any person or agency in support of such a challenge. If the constitutionality of this section is challenged, the Finance and Administration Cabinet shall be the sole named respondent in that litigation, and shall consult with the Legislative Research Commission regarding defense of that litigation.

➔Section 30. KRS 56.450 is amended to read as follows:

- (1) There is recognized, as an independent agency of the state within the meaning of KRS Chapter 12, and as a constituted authority of the Commonwealth of Kentucky, a state and a sovereign entity within the meaning of regulations of the United States Department of the Treasury, Internal Revenue Service, a State Property and Buildings Commission composed of the Governor, who shall be chairman thereof, the Lieutenant Governor who shall be vice chairman of the commission, the Attorney General, the secretary of the Cabinet for Economic Development, *the executive director of the Office of the Controller, the state budget director*, and the secretary of the Finance and Administration Cabinet, or their alternates as authorized in subsection (5) of this section.
- (2) No member of the commission shall receive any salary, fee, or other remuneration for his services as a member of the commission, but each member shall be entitled to be reimbursed for his ordinary traveling expenses, including meals and lodging, incurred in the performance of his duties.
- (3) The commission shall constitute a public body corporate with perpetual succession and power in its name to contract and be contracted with, sue and be sued, adopt bylaws, have and use a corporate seal, and exercise all of the powers granted to private corporations generally in KRS Chapter 271B, except as that chapter may be inconsistent with KRS 56.440 to 56.550.
- (4) Subject to the provisions of KRS 56.550, but notwithstanding any other provision of the Kentucky Revised Statutes to the contrary, all revenue bonds issued by state agencies, except as provided in this chapter (but not including bonds issued directly by and in the name of the Commonwealth of Kentucky under authorization of the executive cabinet), shall be issued under the provisions of this chapter. As an additional and alternative method for the issuance of revenue bonds under the provisions of this chapter, upon application of any state agency and approval by the commission, the commission acting for and on behalf of said state agency may issue revenue bonds in its own name, in accordance with the terms and provisions of KRS Chapter 58, secured by and payable solely from all or any part of the revenues of the state agency as may be specified and provided in the approved application. Any covenants and undertakings of the state agency in the approved application with regard to the production of revenues and the use, application, or disposition thereof may be enforced by

the holders of any of the revenue bonds or by any trustee for such bondholders. The issuance of any revenue bonds for the state or any of its agencies by or on behalf of the Kentucky Economic Development Finance Authority and the issuance of any revenue bonds for economic development projects authorized by Acts 1980, Ch. 109, shall require the prior approval of the State Property and Buildings Commission. In issuing bonds under its own name, or in approving issuance of bonds by other state agencies, the commission shall be deemed to be acting for the state government of the Commonwealth of Kentucky as one (1) unit within the meaning of the regulations of the United States Department of the Treasury, Internal Revenue Service, and it shall be limited to the issuance of bonds to accomplish the public purposes of that unit.

- (5) (a) Each member of the commission may designate, by an instrument in writing over his signature and filed with the secretary as a public record of the commission, an alternate with full authority to attend in the absence of the appointing member for any reason, any properly convened meeting of the commission and to participate in the consideration of, and voting upon, business and transactions of the commission. Any designation of an alternate may, in the discretion of the appointing member, be limited upon the face of the appointing instrument, to be effective only for a designated meeting or only for specified business; or the same may be shown on the face of the appointing instrument to be on a continuing basis (but in no case for a period of more than four (4) years), whenever the appointing member is unable to attend, but always subject to revocation by the appointing member in an instrument of like formality, similarly filed with the secretary as a public record of the commission. Any party transacting business with the commission, or materially affected thereby, shall be entitled to accept and rely upon a joint certificate of the secretary of the commission and any member of the commission concerning the designation of any alternate, the time of designation, the scope thereof, and if of a continuing nature, whether the same has been revoked, and when; and the joint certificate shall be made and delivered to any such party within a reasonable time after written request is made therefor with acceptable identification of the business or transaction referred, and of the requesting party's interest therein. Each alternate shall be a person on the staff of the appointing member, or in the employ of his agency or department of the government of the Commonwealth, as the case may be.
- (b) Any four (4) members of the commission, or their alternates authorized under paragraph (a) of this subsection, shall constitute a quorum and shall by majority vote be authorized to transact any and all business of the commission.
- (c) The State Property and Buildings Commission is reconstituted as of October 1, 1976, with the powers herein provided.

➔Section 31. KRS 56.861 is amended to read as follows:

- (1) There is recognized as an independent agency of the state within the meaning of KRS Chapter 12, and as a constituted authority of the Commonwealth of Kentucky, a state and a sovereign entity within the meaning of regulations of the United States Department of Treasury, Internal Revenue Service, a Kentucky Asset/Liability Commission composed of the secretary of the Finance and Administration Cabinet, who shall be chair; the Attorney General; the State Treasurer; *the executive director of the Office of the Controller*; and the state budget director, or their alternates as authorized in KRS 56.865. The vice chair shall be elected from among the membership.
- (2) Any three (3) members of the commission, or their alternates, shall constitute a quorum and shall by a majority vote be authorized to transact any and all business of the commission.
- (3) No member shall receive any salary, fee, or other remuneration for services as a member of the commission, but each shall be entitled to reimbursement for ordinary traveling expenses, including meals and lodging, incurred in the performance of the member's duties.
- (4) The commission shall constitute a public body corporate with perpetual succession and power in name to contract and be contracted with, sue and be sued, adopt bylaws not inconsistent with KRS 56.860 to 56.869, have and use a corporate seal, and exercise all of the powers granted private corporations generally in KRS Chapter 271B, except as the same may be inconsistent with KRS 56.860 to 56.869.
- (5) The selection of bond counsel, senior managing underwriter, or financial advisor to the commission shall be subject to the provisions of KRS 45A.840 to 45A.879.
- (6) Notes issued pursuant to KRS 56.860 to 56.869 may be sold on a competitive or negotiated sale basis.

➔Section 32. KRS 61.8715 is amended to read as follows:

The General Assembly finds an essential relationship between the intent of this chapter and that of KRS 171.410 to 171.740, dealing with the management of public records, and of *Sections 2 to 13 of this Act* [KRS 11.501 to 11.517], 45.253, 171.420, 186A.040, 186A.285, and 194A.146, dealing with the coordination of strategic planning for computerized information systems in state government; and that to ensure the efficient administration of government and to provide accountability of government activities, public agencies are required to manage and maintain their records according to the requirements of these statutes. The General Assembly further recognizes that while all government agency records are public records for the purpose of their management, not all these records are required to be open to public access, as defined in this chapter, some being exempt under KRS 61.878.

➔ Section 33. KRS 65.7621 is amended to read as follows:

As used in KRS 65.7621 to 65.7643, unless the context requires otherwise:

- (1) "Administrator" means ~~the executive director of the Office of the 911 Coordinator within the Kentucky Office of Homeland Security functioning as~~ the state administrator of CMRS emergency telecommunications under *Section 4 of this Act* [KRS 11.505];
- (2) "Automatic location identification", or "ALI" means an enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call and includes the term "pseudo-automatic number identification;"
- (3) "Automatic number identification", or "ANI" means an enhanced 911 service capability that enables the automatic display on an ALI screen of the ten-digit, or equivalent, wireless telephone number used to place a 911 call;
- (4) "CMRS" means commercial mobile radio service under Sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. secs. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, as it existed on August 10, 1993. The term includes the term "wireless" and service provided by any wireless real time two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, and the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line;
- (5) "CMRS Board" or "board" means the Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky;
- (6) "CMRS connection" means a mobile handset telephone number assigned to a CMRS customer;
- (7) "CMRS customer" means an end user to whom a mobile handset telephone number is assigned and to whom CMRS is provided in return for compensation;
- (8) "CMRS Fund" means the commercial mobile radio service emergency telecommunications fund;
- (9) "CMRS provider" means a person or entity who provides CMRS to an end user. The term includes both facilities-based resellers and nonfacilities-based resellers;
- (10) "CMRS service charge" means the CMRS emergency telephone service charge levied under KRS 65.7629(3) and collected under KRS 65.7635;
- (11) "FCC order" means the Order of the Federal Communications Commission, FCC Docket No. 94-102, adopted effective October 1, 1996, including any subsequent amendments or modifications thereof;
- (12) "Local exchange carrier" or "LEC" means any person or entity who is authorized to provide telephone exchange service or exchange access in the Commonwealth;
- (13) "Local government" means any city, county, charter county, or urban-county government of the Commonwealth, or any other governmental entity maintaining a PSAP;
- (14) "Mobile telephone handset telephone number" means the ten (10) digit number assigned to a CMRS connection;
- (15) "Proprietary information" means information held as private property, including customer lists and other related information, technology descriptions, technical information, or trade secrets;

- (16) "Pseudo-automatic number identification" means a wireless enhanced 911 service capability that enables the automatic display of the number of the cell site or cell face;
- (17) "Public safety answering point" or "PSAP" means a communications facility that is assigned the responsibility to receive 911 calls originating in a given area and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 911 calls to appropriate public safety agencies;
- (18) "Service supplier" means a person or entity who provides local exchange telephone service to a telephone subscriber;
- (19) "Wireless enhanced 911 system," "wireless E911 system," "wireless enhanced 911 service," or "wireless E911 service" means an emergency telephone system that provides the end user of the CMRS connection with wireless 911 service and, in addition, directs 911 calls to appropriate public safety answering points based on the geographical location from which the call originated and provides the capability for automatic number identification and automatic location identification features in accordance with the requirements of the FCC order; and
- (20) "Tier III CMRS provider" means a non-nationwide Commercial Mobile Radio Service provider with no more than five hundred thousand (500,000) subscribers as of December 31, 2001.

➔Section 34. KRS 65.7625 is amended to read as follows:

- (1) The **CMRS Board shall appoint a**~~executive director of the Office of the 911 Coordinator shall be the~~ state administrator of commercial mobile radio service emergency telecommunications. The CMRS Board shall set the administrator's compensation, which shall be paid from that portion of the CMRS fund that is authorized under KRS 65.7631(1) to be used by the board for administrative purposes.
- (2) The administrator of CMRS emergency telecommunications shall serve as a member of the CMRS Board and, as the coordinator and administrative head of the board, shall conduct the day-to-day operations of the board.
- (3) The administrator shall, with the advice of the board, coordinate and direct a statewide effort to expand and improve enhanced emergency telecommunications capabilities and responses throughout the state, including but not limited to the implementation of wireless E911 service requirements of the FCC order and rules and regulations adopted in carrying out that order. In this regard, the administrator shall:
- (a) Obtain, maintain, and disseminate information relating to emergency telecommunications technology, advances, capabilities, and techniques;
  - (b) Coordinate and assist in the implementation of advancements and new technology in the operation of emergency telecommunications in the state; and
  - (c) Implement compliance throughout the state with the wireless E911 service requirements established by the FCC order and any rules or regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order.

➔Section 35. KRS 65.7631 is amended to read as follows:

The moneys in the CMRS fund shall be apportioned among the approved uses of the fund as specified in this section. The board shall make individual disbursements from the fund upon such terms and conditions necessary in view of the amount of revenues on deposit at the time each request for disbursement is reviewed and approved.

- (1) Not more than two and one-half percent (2.5%) of the total monthly revenues deposited into the CMRS fund shall be disbursed or reserved for disbursement by the board to pay the administrative costs and expenses incurred in the operation of the board, including the compensation of the administrator and expenses incurred pursuant to ~~KRS 11.512 and~~ 65.7629(10), (11), (13), (16), (17), and (18). An additional sum, not to exceed two hundred fifty thousand dollars (\$250,000), shall be available to the board from the fund to implement the wireless workload formula under subsection (3)(b) of this section.
- (2) (a) Not more than ten percent (10%) of the total monthly revenues deposited into the CMRS fund shall be disbursed or reserved for disbursement by the board to provide direct grants or matching money:
1. For the establishment and improvement of E911 services in the Commonwealth;
  2. For incentives to create more efficient delivery of E911 services by local governments receiving funding under subsection (3) of this section;

3. For improvement of 911 infrastructure by wireless carriers receiving funding under subsection (4) of this section; and
  4. For consolidation reimbursement of one hundred thousand dollars (\$100,000) per PSAP, not to exceed two hundred thousand dollars (\$200,000) per county, to any PSAP that consolidates with a CMRS-certified PSAP, or creates a newly consolidated Phase II compliant PSAP. Funds shall be applied toward the cost of consolidating. If a PSAP consolidates and receives reimbursement, the CMRS Board shall not certify a new PSAP within the same county for a period of ten (10) years.
    - (b) When the balance of money collected under paragraph (a) of this subsection and not yet disbursed for direct grants or matching moneys exceeds two million dollars (\$2,000,000), the excess amount shall be allocated under the provisions of subsections (3) and (4) of this section.
- (3) From the balance of the total monthly revenues deposited into the CMRS fund after the amounts disbursed or reserved for disbursement under subsections (1) and (2) of this section have been subtracted, eighty percent (80%) shall be distributed to PSAPs eligible to receive disbursement from the CMRS fund under subsection (5) of this section who actually request disbursement, as follows:
- (a) Forty percent (40%) shall be distributed according to the "PSAP pro rata formula," whereby each receives a percentage determined by dividing one (1) by the total number of PSAPs eligible to request and actually requesting disbursements under subsection (5) of this section. Any PSAPs certified before January 1, 2004, or for more than three (3) years, that choose to consolidate their operations shall continue to receive pro-rata shares as if they remained separate and distinct entities. The consolidated entity must be certified to receive funds under subsection (5) of this section; and
  - (b) Forty (40%) shall be distributed according to a method chosen by the board and based on the wireless workload of the PSAP. Methods to be considered may be based on the number of wireless 911 calls answered by each PSAP, the number of wireless phone users served by each PSAP, or any other method deemed by the board to be reasonable and equitable. The method chosen shall be promulgated as a regulation under KRS 65.7633.

All amounts distributed to PSAPs under this subsection shall be used by the PSAPs solely for the purposes of answering, routing, and properly disposing of CMRS 911 calls, training PSAP staff, public education concerning appropriate use of 911, and of complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission pursuant to the FCC order, including the payment of costs and expenses incurred in designing, upgrading, purchasing, leasing, programming, testing, installing, or maintaining all necessary data, hardware, and software required in order to provide wireless E911 service.

- (4) The balance of the total monthly revenues deposited into the CMRS fund which remains after the disbursements or disbursement reservations prescribed by subsections (1), (2), and (3) of this section have been made shall be distributed to CMRS providers licensed to do business in the Commonwealth solely for the purpose of reimbursing the actual expenses incurred by the CMRS providers in complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order, including but not limited to costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, testing, installing, or maintaining all necessary data, hardware, and software required in order to provide wireless E911 service. Sworn invoices shall be presented to the board in connection with any request for reimbursement under this subsection, and approval by a majority vote of the board shall be required prior to any disbursement, which approval shall not be withheld unreasonably. No payment shall be made to any provider who is not in compliance with all requirements of this chapter and the FCC order. In no event shall any invoice for reimbursement be approved for payment of costs that are not related to compliance with requirements established by the FCC order. If the total amount of invoices submitted to the CMRS Board and approved for payment exceeds the amount in the CMRS fund in any month, CMRS providers that have invoices approved for payment shall receive a pro rata share of the fund available that month, based on approved invoices, and the balance of the payments shall be carried over to the following months until all of the approved payments are made.
- (5) Notwithstanding any other provision of the law, no PSAP shall be eligible to request or receive a disbursement from the CMRS fund under subsection (3) of this section unless and until the PSAP:

- (a) Is expressly certified as a PSAP by the CMRS Board, upon written application to the CMRS Board;
- (b) Demonstrates that the PSAP is providing E911 services to a local government that has adopted an ordinance either imposing a special tax, license, or fee as authorized by KRS 65.760(3) or has established other means of funding wireline 911 emergency telephone service;
- (c) Demonstrates that the administrator of the PSAP sent a request for wireless, E911 service to a CMRS provider, and that the infrastructure of the local exchange carrier will support wireless E911 service;
- (d) Provides an accounting of the number of wireless E911 calls received by the PSAP during the prior calendar year if requested by the board; and
- (e) Demonstrates that the PSAP has made the investment which is necessary to allow the PSAP to receive and utilize the data elements associated with wireless E911 service.

➔Section 36. KRS 131.020 is amended to read as follows:

- (1) The Department of Revenue, headed by a commissioner appointed by the secretary with the approval of the Governor, shall be organized into the following functional units:
  - (a) Office of the Commissioner of the Department of Revenue, *to include the Division of Special Investigations, headed by a division director who shall report to the commissioner. The division shall investigate alleged violations of the tax laws and recommend criminal prosecution of the laws as warranted;*
  - (b) Division of Legislative Services, headed by a division director who shall report to the commissioner of the Department of Revenue. The division shall perform such duties as providing support to the commissioner's office; managing the department's legislative efforts, including developing and drafting proposed tax legislation, coordinating review of proposed legislation, and coordinating development of administrative regulations; providing technical support and research assistance to all areas of the department; performing studies, surveys, and research projects to assist in policy-making decisions; and performing various miscellaneous duties, including working on special projects and conducting training;
  - (c) Office of Processing and Enforcement, headed by an executive director who shall report directly to the commissioner. The office shall be responsible for processing documents, depositing funds, collecting debt payments, and coordinating, planning, and implementing a data integrity strategy. The office shall consist of the:
    - 1. Division of Operations, which shall be responsible for opening all tax returns, preparing the returns for data capture, coordinating the data capture process, depositing receipts, maintaining tax data, and assisting other state agencies with similar operational aspects as negotiated between the department and the other agency;
    - 2. Division of Collections, which shall be responsible for initiating all collection enforcement activity related to due and owing tax assessments, *including protest resolution*, and for assisting other state agencies with similar collection aspects as negotiated between the department and the other state agency; and
    - 3. Division of Registration and Data Integrity, which shall be responsible for registering businesses for tax purposes, ensuring that the data entered into the department's tax systems is accurate and complete, and assisting the taxing areas in proper procedures to ensure the accuracy of the data over time;
  - ~~(d) Office of the Taxpayer Ombudsman. The Office of the Taxpayer Ombudsman shall be headed by an executive director, functioning as the taxpayer ombudsman as established by KRS 131.051(1) and 131.071, who shall report to the commissioner. The functions and duties of the office shall consist of those established by KRS 131.071;~~
  - ~~(e)~~ Office of Property Valuation. The Office of Property Valuation shall be headed by an executive director who shall report directly to the commissioner. The functions and duties of the office shall include:
    - 1. Mapping;~~;~~
    - 2. Providing assistance to property valuation administrators;~~;~~
    - 3. Supervising the property valuation process throughout the Commonwealth;~~;~~

4. Valuing the property of public service companies;~~{}~~
  5. Valuing unmined coal and other mineral resources;~~{}~~
  6. Administering personal property taxes;~~{, and}~~
  7. Collecting delinquent taxes;~~{, The Office of Property Valuation shall consist of the Divisions of:}~~
  - 8.~~{1.}~~ **Overseeing**~~{Local Valuation, which shall oversee}~~ the real property tax assessment and collection process throughout the state in each county's property valuation administrator's and sheriff's office;
  - 9.~~{2.}~~ **Administering**~~{State Valuation, which shall administer}~~ all state-assessed taxes, including public service property tax, motor vehicle property tax, and the tangible and intangible tax program; and
  - 10.~~{3.}~~ **Administering**~~{Minerals Taxation and GIS Services, which shall administer}~~ the severance tax and unmined minerals property tax programs and coordinate the department's geographical information system (GIS);
- ~~(e){f)}~~ Office of Sales and Excise Taxes, headed by an executive director who shall report directly to the commissioner. The office shall administer all matters relating to sales and use taxes and miscellaneous excise taxes, including but not limited to technical tax research, compliance, taxpayer assistance, tax-specific training, and publications. The office shall consist of the:
1. Division of Sales and Use Tax, which shall administer the sales and use tax; and
  2. Division of Miscellaneous Taxes, which shall administer various other taxes, including but not limited to alcoholic beverage taxes; cigarette enforcement fees, stamps, meters, and taxes; gasoline tax; bank franchise tax; inheritance and estate tax; insurance premiums and insurance surcharge taxes; motor vehicle tire fees and usage taxes; and special fuels taxes;
- ~~(f){g)}~~ Office of Income Taxation, headed by an executive director who shall report directly to the commissioner. The office shall administer all matters related to income and corporation license taxes, including technical tax research, compliance, taxpayer assistance, tax-specific training, and publications. The office shall consist of the:
1. Division of Individual Income Tax, which shall administer the following taxes or returns: individual income, fiduciary, and employer withholding; and
  2. Division of Corporation Tax, which shall administer the corporation income tax, corporation license tax, pass-through entity withholding, and pass-through entity reporting requirements; and
- ~~(g){h)}~~ Office of Field Operations, headed by an executive director who shall report directly to the commissioner. The office shall manage the regional taxpayer service centers and the field audit program.
- (2) The functions and duties of the department shall include conducting conferences, administering taxpayer protests, and settling tax controversies on a fair and equitable basis, taking into consideration the hazards of litigation to the Commonwealth of Kentucky and the taxpayer. The mission of the department shall be to afford an opportunity for taxpayers to have an independent informal review of the determinations of the audit functions of the department, and to attempt to fairly and equitably resolve tax controversies at the administrative level.
  - (3) The department shall maintain an accounting structure for the one hundred twenty (120) property valuation administrators' offices across the Commonwealth in order to facilitate use of the state payroll system and the budgeting process.
  - (4) Except as provided in KRS 131.190(4), the department shall fully cooperate with and make tax information available as prescribed under KRS 131.190(2) to the Governor's Office for Economic Analysis as necessary for the office to perform the tax administration function established in KRS 42.410.
  - (5) Executive directors and division directors established under this section shall be appointed by the secretary with the approval of the Governor.

➔Section 37. KRS 131.051 is amended to read as follows:

As used in KRS 131.041 to 131.081, unless the context requires otherwise:

~~{(1) "Taxpayer ombudsman" means the person appointed by the commissioner of revenue to carry out the administrative functions and responsibilities relating to the Office of the Taxpayer Ombudsman created pursuant to KRS 131.071.~~

~~(2)~~ "Taxpayer representative" means any attorney, tax practitioner, or other person designated by a taxpayer to represent him before the department in any matter relating to taxes administered by the department.

➔Section 38. KRS 131.435 is amended to read as follows:

For purposes of accounting for the revenues received pursuant to KRS 131.410 to 131.445, the ~~department~~~~{cabinet}~~ shall establish within the general fund a separate and distinct tax amnesty receipt account. All receipts collected as a result of the amnesty program shall be paid into this account, and all transactions involving this account shall be accounted for and reported as such.

➔Section 39. KRS 131.654 is amended to read as follows:

- (1) At least sixty (60) days before publishing the name of a delinquent taxpayer, the ~~department~~~~{cabinet}~~ shall mail a written notice to the taxpayer, detailing the amount and nature of each liability and the intended publication of the information listed in KRS 131.656 related to the liability. The notice shall be mailed by first class mail addressed to the last known address of the taxpayer. The notice shall include information regarding the exceptions listed in KRS 131.652 and shall state that the taxpayer's information will not be published if the taxpayer pays the delinquent obligation, enters into an agreement to pay, or provides information establishing that KRS 131.652 prohibits publication of the taxpayer's name.
- (2) After at least sixty (60) days have elapsed since the notice was mailed and the delinquent tax or fee has not been paid and the taxpayer has not proved to the ~~department~~~~{cabinet}~~ that KRS 131.652 prohibits publication, the ~~department~~~~{cabinet}~~ may publish in a list of delinquent taxpayers the information about the taxpayer that is listed in KRS 131.656.

➔Section 40. KRS 139.515 is amended to read as follows:

- (1) As used in this section:
  - (a) "Agency" has the same meaning as in KRS 154.30-010;
  - (b) "Signature project" means a project that meets the requirements established by KRS 154.30-050; and
  - (c) "Tangible personal property used in the construction of a signature project" means tangible personal property that:
    1. Consists of:
      - a. Permanently incorporated building materials and fixtures that are an improvement to real property on the signature project;
      - b. Building materials temporarily incorporated into the signature project for infrastructure support during construction; or
      - c. Temporarily incorporated specialized forms for concrete that are for exclusive use on the qualifying signature project; and
    2. Is not machinery or equipment.
- (2) (a) Notwithstanding any other provision of KRS Chapter 139 and KRS 134.580, the sales or use tax paid on the purchase of tangible personal property used in the construction of the portion of a signature project that does not relate to approved public infrastructure costs or approved signature project costs, as defined in KRS 154.30-010, may be refunded to the agency under the conditions established by subsection (3) of this section.
- (b) The authority, as defined in KRS 154.30-010, shall notify the department upon the approval of a signature project. The notification shall include the name of the signature project, the name of the agency, the name of the project developer, the commencement date of the tax incentive agreement, and the percentage of total anticipated expenditures for tangible personal property used in the construction of a signature project that are not included in the project grant agreement as approved public infrastructure costs or approved signature project costs.

- (c) The department shall determine the total amount of eligible refund due under each application for refund based upon the actual percentage of total expenditures for tangible personal property used in the construction of a signature project that are not included in the project grant agreement as approved public infrastructure costs reported in the refund request reduced by the amount of vendor compensation taken in accordance with KRS 139.570.
- (3) To qualify for the refund established by subsection (2) of this section, the agency shall collect from the purchasers of tangible personal property used in the construction of the signature project all documentation relating to the payment of sales or use tax, and shall file an application for refund of the sales or use tax paid by the purchasers as reflected in the documentation collected. Requests for refund shall be filed annually during the first twelve (12) years the project grant agreement is in effect, and shall cover purchases made during the immediately preceding year. Requests for refund shall be filed in the manner directed by the ~~department~~~~cabinet~~.
- (4) (a) The agency shall file the first year refund request within sixty (60) days following the end of the fiscal year in which the project grant agreement is executed. The agency shall file the final refund request within sixty (60) days following the end of the eleventh fiscal year following the fiscal year in which the project grant agreement was executed, or within sixty (60) days after construction is complete, whichever date is earlier. All other annual refund requests shall be filed within sixty (60) days after the completion of each fiscal year.
- (b) Failure to file a refund request within the timeframes provided in paragraph (a) of this subsection shall result in an adjustment to the refund amount paid as follows:
1. For late refund requests filed within the first one hundred twenty (120) days after the request was due, for each month or portion thereof that the refund request is late, the refund amount shall be reduced by one twelfth (1/12) of the total amount determined by the department to be due to the agency.
  2. Any refund request filed more than one hundred twenty (120) days after the timeframes provided in paragraph (a) of this subsection shall be rejected and no refunds shall be paid for the time period covered by the request.
- (5) Interest shall not be allowed or paid on any refund made under the provisions of this section.
- (6) The agency shall execute information sharing agreements prescribed by the department with contractors, vendors, and other related parties to verify construction material costs.

➔Section 41. KRS 143A.090 is amended to read as follows:

- (1) The ~~department~~~~cabinet~~ may upon written request received on or prior to the due date of the return or tax, for good cause satisfactory to the ~~department~~~~cabinet~~, extend the time for filing the return or paying the tax for a period not exceeding thirty (30) days.
- (2) Any taxpayer to whom an extension is granted and who pays the tax within the period for which the extension is granted shall pay, in addition to the tax, interest at the tax interest rate as defined in KRS 131.010(6) from the date on which the tax would otherwise have been due.

➔Section 42. KRS 151.710 is amended to read as follows:

- (1) The Governor shall appoint members to the Kentucky River Authority, created to carry out the essential public purpose of protecting the health and welfare of the people of the Commonwealth as declared in KRS 151.700.
- (2) The Governor shall appoint the secretaries of the Finance and Administration Cabinet and the Environmental and Public Protection Cabinet and ten (10) other persons as the members of the authority. The secretaries may designate alternates. Of the ten (10) persons, one (1) shall be a registered engineer, one (1) an expert in water quality, one (1) a mayor, and one (1) a county judge/executive. The mayor and the county judge/executive shall be officers from counties which obtain the major portion of their water supply from the Kentucky River. Five (5) members shall reside in a county adjacent to the main stem of the Kentucky River, one (1) of the five (5) members residing in counties adjacent to locks and dams one (1) through four (4); and one (1) member shall reside in a county adjacent to either the North Fork, Middle Fork, or South Fork of the Kentucky River. Of the twelve (12) members, only one (1) may be an employee of the Environmental and Public Protection Cabinet.

- (3) Of the ten (10) members first appointed, two (2) shall continue in office for terms of one (1) year, two (2) for terms of two (2) years, three (3) for terms of three (3) years, and three (3) for terms of four (4) years, as the Governor designates. At the expiration of the original terms and for all succeeding terms, the Governor shall appoint a successor to the authority for a term of four (4) years in each case. Members may be reappointed. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term. *Any member whose term has expired may continue to serve and vote until his or her successor is appointed and qualified.*
- (4) Each member shall receive as compensation one hundred dollars (\$100) per day for attending a meeting of the authority.
- (5) Any member who misses three (3) consecutive meetings of the authority shall be deemed to have vacated the office. The authority shall declare the office vacant and the office shall be filled as provided by subsections (2) and (3) of this section.
- (6) The authority annually shall elect one (1) of its members as chairman. A quorum for the transaction of business shall be *seven (7)* ~~six (6)~~ members, and a majority of the members present at a meeting may take action on any matter legally before the authority.
- (7) Members shall be paid their necessary travel expenses incurred in attending meetings and in the performance of their official duties, in addition to the per diem compensation of one hundred dollars (\$100).
- (8) The authority shall meet at least quarterly, and may meet upon the call of the chairman.
- (9) The chairman shall be paid necessary travel expenses and a one hundred dollar (\$100) per diem compensation for conducting official business of the authority.
- (10) The authority shall be attached for administrative purposes to the Finance and Administration Cabinet, and the cabinet shall provide the necessary personnel to provide administrative services for the authority.
- (11) The necessary travel expenses and per diem compensation of the members of the authority in attending meetings and in the performance of their official duties shall be paid by the authority.
- (12) The authority shall promulgate administrative regulations necessary to carry out its duties, and shall report annually to the Governor and the Legislative Research Commission.

➔Section 43. KRS 164.6903 is amended to read as follows:

As used in KRS 164.6901 to 164.6935, unless the context requires otherwise:

- (1) "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or an endorsement contract;
- (2) "Athlete agent" means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization;
- (3) "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male and female students, the athletic program for males or the athletic program for females, as appropriate;
- (4) "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract;
- (5) "Division" means the Division of Occupations and Professions in the *Environmental and Public Protection* ~~Finance and Administration~~ Cabinet;
- (6) "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance;
- (7) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics;

- (8) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity;
- (9) "Professional-sports-services contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete;
- (10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;
- (11) "Registration" means registration as an athlete agent pursuant to KRS 164.6901 to 164.6935;
- (12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and
- (13) "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

➔Section 44. KRS 165A.340 is amended to read as follows:

- (1) There is hereby established a State Board for Proprietary Education which shall be attached to the ***Environmental and Public Protection*** Cabinet ~~for Finance and Administration, Office of Administrative Services~~, Division of Occupations and Professions and shall consist of eleven (11) voting members to be appointed by the Governor as follows:
  - (a) Three (3) members representative of privately owned educational institutions appointed from a list of seven (7) names submitted by the Kentucky Association of Career Colleges and Schools;
  - (b) Three (3) members representative of technical schools appointed from a list of seven (7) names submitted by the Kentucky Association of Career Colleges and Schools; and
  - (c) Five (5) members representative of the public at large.
- (2) The term of each member shall be four (4) years or until a successor is appointed. If a vacancy occurs on the board, a new member shall be appointed to serve the remainder of the unexpired term.
- (3) The director of the Division of Occupations and Professions in the ***Environmental and Public Protection*** ~~Finance and Administration~~ Cabinet shall serve as executive director of the board. Members of the board shall annually elect one (1) of their number as chairman. The board may make all rules and regulations, including the establishment of fees and other charges consistent with the provisions of this chapter, as may be necessary to carry out the provisions and purposes of this chapter.
- (4) The board shall hold meetings at least four (4) times a year and as frequently as it deems necessary at the times and places as the board may designate and the majority of the members shall constitute a quorum.
- (5) The board may sue and be sued in its own name.
- (6) The members of the board shall receive one hundred dollars (\$100) per day for each meeting attended and may be paid their travel and other expenses while employed upon the business of the board.
- (7) The board shall administer the provisions of law pertaining to the conduct, operation, maintenance, and establishment of proprietary education institutions, and the activities of agents thereof when acting as such.
- (8) The board shall have the power to subpoena witnesses and school records as it deems necessary.

➔Section 45. KRS 174.020 is amended to read as follows:

- (1) The Transportation Cabinet shall consist of the following major organizational units:
  - (a) The Office of the Secretary, which shall include, but not be limited to:
    - 1. The secretary to be appointed by the Governor under KRS 12.255; and
    - 2. The deputy secretary appointed under KRS 12.040;

- (b) The Department of Highways, headed by a commissioner, appointed by the Governor under KRS 12.040 on the recommendation of the secretary;
- (c) The Department of Vehicle Regulation, headed by a commissioner, appointed by the secretary with the approval of the Governor, under KRS 12.040;
- (d) The Department of Intergovernmental Programs, headed by a commissioner appointed by the Governor under KRS 12.040;
- (e) The Department of Aviation, headed by a commissioner appointed by the Governor under KRS 12.040. The Kentucky Airport Zoning Commission established by KRS 183.861 shall be attached to the Department of Aviation for administrative purposes;
- (f) The Department of Administrative Services, headed by a commissioner appointed by the Governor under KRS 12.040;
- (g) The following offices, which shall be attached to the Office of the Secretary:
  - 1. The Office of Public Affairs, headed by an executive director appointed under KRS 12.040;
  - 2. The Office of Budget and Fiscal Management, headed by an executive director appointed under KRS 12.040;
  - 3. The Office of Transportation Delivery, headed by an executive director appointed under KRS 12.040;
  - 4. The Office of Legislative and Intergovernmental Affairs, headed by an executive director appointed under KRS 12.040;
  - 5. The Office for Business and Occupational Development, headed by an executive director appointed under KRS 12.040;
  - 6. The Office of Legal Services, headed by an executive director appointed under KRS 12.040;
  - 7. The Office of Inspector General, headed by an executive director appointed under KRS 12.040;
  - 8. The Office of Transportation Operations Center, headed by an executive director appointed under KRS 12.040; and
  - 9. The Office of Personnel Management, headed by an executive director appointed under KRS 12.040;
- (h) The following offices, which shall be attached to the Department of Highways:
  - 1. The Office of Program Planning and Management, headed by an executive director appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322, and known as the deputy state highway engineer for program planning and management;
  - 2. The Office of Project Development, headed by an executive director appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322, and who shall be known as the deputy state highway engineer for project development;
  - 3. The Office of Construction and Operations, headed by an executive director appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322, and who shall be known as the deputy state highway engineer for construction and operations;
  - 4. The Office of Intermodal Programs, headed by an executive director appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322, and who shall be known as the deputy state highway engineer for intermodal programs; and
  - 5. Highway District Offices One through Twelve, each district office to be headed by a chief highway district engineer, appointed by the secretary upon the recommendation of the commissioner and the state highway engineer, with the approval of the Governor; and
- (i) The following offices, which shall be attached to the Department of Intergovernmental Programs:
  - 1. Office of Transportation Enhancement Programs, headed by an executive director appointed under KRS 12.040; and

2. Office of Rural and Secondary Roads, headed by an executive director appointed under KRS 12.040.

- (2) The positions of director in the ~~Division of Fleet Management,~~ Division of Professional Services~~,~~ and Division of Environmental Analysis are policy-making positions under KRS 18A.175.

➔ Section 46. KRS 198A.030 is amended to read as follows:

- (1) There is hereby created and established an independent, de jure municipal corporation and political subdivision of the Commonwealth which shall be a public body corporate and politic to be known as the Kentucky Housing Corporation.
- (2) The Kentucky Housing Corporation is created and established as a de jure municipal corporation and political subdivision of the Commonwealth to perform essential governmental and public functions and purposes in improving and otherwise promoting the health and general welfare of the people by the production of residential housing in Kentucky.
- (3) The corporation shall be governed by a board of directors, consisting of **fifteen (15)**~~thirteen (13)~~ members, five (5) of whom shall be the Lieutenant Governor, the secretary of the Finance and Administration Cabinet, the commissioner of the Governor's Office for Local Development, the Attorney General, and the secretary of the Cabinet for Economic Development, or their duly appointed designees, as public directors, and **ten (10)**~~eight (8)~~ private directors who shall be appointed by the Governor, subject to confirmation by the Senate as provided by KRS 11.160, as follows:
- (a) One (1) private director representing the interests of financial lending institutions located within the Commonwealth;
  - (b) One (1) private director representing the interests of the manufactured housing industry within the Commonwealth;
  - (c) One (1) private director representing the interests of real estate practitioners licensed by the Kentucky Real Estate Commission;
  - (d) One (1) private director representing the interests of the homeless population within the Commonwealth;
  - (e) One (1) private director representing the interests of local government;
  - (f) One (1) private director representing the interests of the home construction industry in the Commonwealth;
  - (g) One (1) private director representing the interests of consumers in the Commonwealth;~~and~~
  - (h) One (1) private director representing the interests of the Kentucky State Building Trades Council;
  - (i) ***One (1) director representing the interest of nonprofit housing organizations located within the Commonwealth; and***
  - (j) ***One (1) director having significant professional experience in auditing, financial accounting, municipal bond financing, or investment banking.***
- (4) Private directors appointed by the Governor may include previous members of the board, and members may be reappointed for successive terms. All appointments shall be for four (4) years, and the appointees shall serve until a qualified successor is appointed.
- (5) In case of a vacancy, the Governor may appoint a person for the vacancy to hold office during the remainder of the term. A vacancy shall be filled in accordance with the requirement and procedures for appointments.
- (6) The Governor may remove any private director whom he may appoint in case of incompetency, neglect of duty, gross immorality, or malfeasance in office, and he may declare his office vacant and may appoint a person for the vacancy as provided in this section.
- (7) The Governor shall designate a director of the corporation to serve as chairman. The term of the chairman shall extend to the earlier of either the date of expiration of his then current term as a director of the corporation or a date six (6) months after the expiration of the then current term of the Governor designating the chairman.

- (8) The board of directors shall annually elect one (1) of its members as vice chairman. The board of directors shall also elect or appoint, and prescribe the duties of, other officers the board of directors deems necessary or advisable, including an executive director and a secretary, and the board of directors shall fix the compensation of the officers.
- (9) The executive director shall administer, manage, and direct the affairs and business of the corporation, subject to the policies, control, and direction of the board of directors of the corporation. The secretary of the corporation shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents, and papers filed with the corporation, the minute book or journal of the corporation, and its official seal. The secretary shall have authority to cause copies to be made of all minutes and other records and documents of the corporation and to give certificates under the official seal of the corporation to the effect that copies are true copies, and all persons dealing with the corporation may rely upon the certificates.
- (10) A majority of the board of directors of the corporation shall constitute a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. A majority shall be determined by excluding any existing vacancies from the total number of directors.
- (11) Action shall be taken by the corporation upon a vote of a majority of the directors present at a meeting at which a quorum shall exist called upon three (3) days' written notice to each director or upon the concurrence of at least eight (8) directors.
- (12) Each private director shall be entitled to a fee of one hundred dollars (\$100) for attendance at each meeting of the board of directors or duly called committee meeting of the board.

➔Section 47. KRS 216A.045 is amended to read as follows:

The Kentucky Board of Licensure for Nursing Home Administrators is hereby transferred from the Cabinet for Human Resources to the division of occupations and professions in the *Environmental and Public Protection*~~[Finance and Administration]~~ Cabinet.

➔Section 48. KRS 218A.010 is amended to read as follows:

As used in this chapter:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
- (a) A practitioner or by his authorized agent under his immediate supervision and pursuant to his order; or
  - (b) The patient or research subject at the direction and in the presence of the practitioner;
- (2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids;
- (3) "Cabinet" means the Cabinet for Health and Family Services;
- (4) "Child" means any person under the age of majority as specified in KRS 2.015;
- (5) "Controlled substance" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue;
- (6) (a) "Controlled substance analogue," except as provided in subparagraph (b) of this subsection, means a substance:
1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and
  2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
  3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.
- (b) Such term does not include:

1. Any substance for which there is an approved new drug application;
  2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or
  3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance;
- (7) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance;
- (8) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;
- (9) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V controlled substance to or for the use of an ultimate user;
- (10) "Distribute" means to deliver other than by administering or dispensing a controlled substance;
- (11) "Drug" means:
- (a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
  - (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;
  - (c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
  - (d) Substances intended for use as a component of any article specified in this subsection.
- It does not include devices or their components, parts, or accessories;
- (12) "Good faith prior examination," as used in KRS Chapter 218A and for criminal prosecution only, means an in-person medical examination of the patient conducted by the prescribing practitioner or other health-care professional routinely relied upon in the ordinary course of his or her practice, at which time the patient is physically examined and a medical history of the patient is obtained. "In-person" includes telehealth examinations ~~authorized under KRS 11.550 or any other substantially similar program instituted pursuant to KRS 11.550~~. This subsection shall not be applicable to hospice providers licensed pursuant to KRS Chapter 216B;
- (13) "Hazardous chemical substance" includes any chemical substance used or intended for use in the illegal manufacture of a controlled substance as defined in this section or the illegal manufacture of methamphetamine as defined in KRS 218A.1431, which:
- (a) Poses an explosion hazard;
  - (b) Poses a fire hazard; or
  - (c) Is poisonous or injurious if handled, swallowed, or inhaled;
- (14) "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance or methamphetamine, the control of which is necessary to prevent, curtail, or limit manufacture;
- (15) "Intent to manufacture" means any evidence which demonstrates a person's conscious objective to manufacture a controlled substance or methamphetamine. Such evidence includes but is not limited to statements and a chemical substance's usage, quantity, manner of storage, or proximity to other chemical substances or equipment used to manufacture a controlled substance or methamphetamine;

- (16) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer;
- (17) "Manufacture," except as provided in KRS 218A.1431, means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:
- (a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice;
  - (b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
  - (c) By a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice;
- (18) "Marijuana" means all parts of the plant *Cannabis sp.*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances;
- (19) "Medical history," as used in KRS Chapter 218A and for criminal prosecution only, means an accounting of a patient's medical background, including but not limited to prior medical conditions, prescriptions, and family background;
- (20) "Medical order," as used in KRS Chapter 218A and for criminal prosecution only, means a lawful order of a specifically identified practitioner for a specifically identified patient for the patient's health-care needs. "Medical order" may or may not include a prescription drug order;
- (21) "Medical record," as used in KRS Chapter 218A and for criminal prosecution only, means a record, other than for financial or billing purposes, relating to a patient, kept by a practitioner as a result of the practitioner-patient relationship;
- (22) "Methamphetamine" means any substance that contains any quantity of methamphetamine, or any of its salts, isomers, or salts of isomers;
- (23) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
  - (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;
  - (c) Opium poppy and poppy straw;
  - (d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
  - (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
  - (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and
  - (g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) of this subsection;
- (24) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms;

- (25) "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds;
- (26) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;
- (27) "Physical injury" has the same meaning it has in KRS 500.080;
- (28) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- (29) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;
- (30) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, advanced registered nurse practitioner as authorized under KRS 314.011, or other person licensed, registered, or otherwise permitted by state or federal law to acquire, distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state. "Practitioner" also includes a physician, dentist, podiatrist, veterinarian, or advanced registered nurse practitioner authorized under KRS 314.011 who is a resident of and actively practicing in a state other than Kentucky and who is licensed and has prescriptive authority for controlled substances under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail;
- (31) "Practitioner-patient relationship," as used in KRS Chapter 218A and for criminal prosecution only, means a medical relationship that exists between a patient and a practitioner or the practitioner's designee, after the practitioner or his designee has conducted at least one (1) good faith prior examination;
- (32) "Prescription" means a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, optometric practitioner, or advanced registered nurse practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
- (33) "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of KRS 218A.204 and 217.216;
- (34) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;
- (35) "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter;
- (36) "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution;
- (37) "Serious physical injury" has the same meaning it has in KRS 500.080;
- (38) "Telehealth" has the same meaning it has in KRS 311.550;
- (39) "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant *Cannabis*, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
  - 1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
  - 2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
  - 3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;
- (40) "Traffic," except as provided in KRS 218A.1431, means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance;
- (41) "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution; and

- (42) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

➔Section 49. KRS 224A.030 is amended to read as follows:

- (1) There is hereby created the Kentucky Infrastructure Authority, which authority shall be a body corporate and politic, constituting a public corporation and a governmental agency and instrumentality of the state. ~~[-All powers, duties, and obligations of the Kentucky Pollution Abatement and Water Resources Finance Authority shall be transferred March 31, 1988, to the Kentucky Infrastructure Authority.]~~ The affairs of the authority shall be managed and carried out by a board consisting of nine (9) members. The secretaries of the Economic Development, Finance and Administration, and Environmental and Public Protection Cabinets; the executive director of the Public Service Commission; and the commissioner of the Governor's Office for Local Development shall serve as ex officio members of the authority. The secretaries, the executive director, and the commissioner may designate alternates. On or before August 1, 2000, the Governor shall additionally appoint five (5) at-large members. One (1) member shall be selected from a list of three (3) nominees submitted by the Kentucky Association of Counties, one (1) member selected from a list of three (3) nominees submitted by the Kentucky League of Cities, one (1) member selected from a list of three (3) nominees submitted by the Kentucky Rural Water Association, one (1) member representing for-profit private water companies, and one (1) member selected from a list of three (3) nominees submitted by the Kentucky section of the American Water Works Association. The at-large members shall serve as follows: two (2) shall serve a term ending June 30, 2004; two (2) shall serve a term ending June 30, 2003; and one (1) shall serve a term ending June 30, 2002. As the terms of the at-large members expire, the Governor shall appoint successors for terms of four (4) years and until their successors are appointed. The members shall constitute the Kentucky Infrastructure Authority, with power in that name to contract and be contracted with, sue and be sued, have and use a corporate seal, and exercise, in addition to the powers and functions specifically stated in this chapter, all of the usual powers of private corporations to the extent that the same are not inconsistent with specifically enumerated powers of the authority. In the carrying out of its purposes and the exercise by it of the powers conferred by this chapter, the authority is deemed and declared to be performing essential governmental functions and public purposes of the state.
- (2) The members of the authority shall receive no compensation for their services in said capacity but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as such members.
- (3) Five (5) members of the authority shall constitute a quorum for the transaction of business, and in the absence of a quorum, one (1) or more members may adjourn from time to time until a quorum is convened. The members of the authority shall choose from their ranks a chair and a vice chair. The authority shall elect a secretary and a treasurer who shall not be members of the authority, each of whom shall serve at the pleasure of the authority and shall receive compensation as may be determined by the authority.
- (4) (a) The authority shall, for administrative purposes, be attached to the Governor's Office for Local Development, which shall provide any office space required by the authority.
- (b) The secretary of the authority shall at all times maintain therein complete records of all of the authority's actions and proceedings which shall constitute public records open to inspection at all reasonable times.

➔Section 50. KRS 310.040 is amended to read as follows:

- (1) The Kentucky Board of Licensure and Certification for Dietitians and Nutritionists is hereby created to be comprised of seven (7) members appointed by the Governor. Three (3) members shall be licensed dietitians, three (3) members shall be certified nutritionists and one (1) member shall be a public member who shall have no pecuniary interest in the nutrition field. Of the members from the nutrition field, one (1) shall represent hospitals, one (1) shall represent health care facilities other than hospitals, one (1) shall represent state or local nutritional programs or shall be in private practice and one (1) shall be a dietetic educator. Appointments may be made from a list of nominees submitted to the Governor by the Kentucky Dietetic Association, the Kentucky Hospital Association, the Kentucky Association of Health Care Facilities, and the Kentucky Medical Association;
- (2) The board shall be placed for administrative purposes under the Division of Occupations and Professions of the **Environmental and Public Protection** ~~[-Finance and Administration]~~ Cabinet.
- (3) Each member of the board shall serve for a term of four (4) years, except that for initial appointments, one (1) shall be for four (4) years, two (2) shall be for three (3) years, and two (2) shall be for two (2) years and one

(1) shall be for one (1) year. No member shall serve more than two (2) consecutive terms and each member on July 15, 1994, shall serve on the board until his successor is appointed. Vacancies shall be filled by appointment of the Governor for the unexpired term.

- (4) The board shall organize annually and elect one (1) of its members as chairman and one (1) of its members as secretary. A quorum of the board shall consist of four (4) members. The board shall meet at least quarterly and upon the call of the chairman, or at the request of two (2) or more members to the secretary of the board.
- (5) Each member of the board shall receive compensation for services in an amount determined by the department, not to exceed one hundred dollars (\$100) dollars per meeting. The members shall be reimbursed for all travel expenses for attending the meetings of the board. The compensation of members and employees of the board shall be paid from the revolving fund established in KRS 310.041(7).

➔Section 51. KRS 329A.025 is amended to read as follows:

- (1) The board shall administer and enforce the provisions of KRS 329A.010 to 329A.090 and shall evaluate the qualifications of applicants for licensure and issue licenses.
- (2) The board shall:
  - (a) Implement the provisions of KRS 329A.010 to 329A.090 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A;
  - (b) Promulgate administrative regulations to establish fees which shall not exceed the amounts necessary to generate sufficient funds to effectively carry out and enforce the provisions of KRS 329A.010 to 329A.090;
  - (c) Promulgate by administrative regulation an examination to be administered at least twice annually to license applicants. The examination shall be designed to measure knowledge and competence in private investigating, including but not limited to the following subject areas:
    - 1. Federal and state constitutional principles;
    - 2. Court decisions related to activities which could result in liability for the invasion of privacy or other activities;
    - 3. Eavesdropping and related offenses, assault and related offenses, search and seizure laws, and laws regarding unlawful access to a computer;
    - 4. General weapons use and concealed weapons laws;
    - 5. Additional state criminal laws and related procedures that are relevant to the practice of private investigating; and
    - 6. Additional subject areas as determined by the board; and
  - (d) Promulgate by administrative regulation a code of professional practice and conduct that shall be based upon generally recognized principles of professional ethical conduct and be binding upon all licensees.
- (3) The board may:
  - (a) Contract with the Division of Occupations and Professions within the ***Environmental and Public Protection*** ~~Finance and Administration~~ Cabinet for the provision of administrative services;
  - (b) Employ any persons it deems necessary to carry on the work of the board. The board may define their duties and fix their compensation;
  - (c) Develop or sponsor at least six (6) hours of continuing professional education annually;
  - (d) Approve and certify a forty (40) hour training class covering the subject areas of the licensing examination;
  - (e) Renew licenses and require continuing professional education as a condition for renewal;
  - (f) Waive the examination requirement for any applicant licensed in a reciprocal state as prescribed in subsection (3)(m) of this section, who is licensed in good standing in that state and meets all of the other requirements of KRS 329A.035;

- (g) Suspend or revoke licenses, impose supervisory or probationary conditions upon licensees, impose administrative disciplinary fines, or issue written admonishments or reprimands, or any combination thereof;
- (h) Issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of KRS 329A.010 to 329A.090;
- (i) Conduct hearings pursuant to KRS Chapter 13B and keep records and minutes necessary to carry out the board's functions;
- (j) Organize itself into two (2) panels to separate the functions of inquiry and hearings. Each panel shall have the power to act as either an inquiry or hearing panel. No member serving on the inquiry panel shall serve on the hearing panel for any one (1) particular case. Any final decision of the hearing panel shall be considered as the final decision of the board and the hearing panel may exercise all powers granted to the board pursuant to KRS Chapter 13B;
- (k) Utilize mediation as a technique to resolve disciplinary matters;
- (l) Seek injunctive relief in the Circuit Court of the county where the alleged unlawful practice occurred to stop the unlawful practice of private investigating by unlicensed persons or companies; and
- (m) Negotiate and enter into reciprocal agreements with appropriate officials in other states to permit licensed investigation companies and private investigators who meet or exceed the qualifications established in KRS 329A.010 to 329A.090 to operate across state lines under mutually acceptable terms.

➔Section 52. KRS 334.170 is amended to read as follows:

The Division of Occupations and Professions in the *Environmental and Public Protection*~~Finance and Administration~~ Cabinet shall provide administrative aid to the board to assist it in the discharge of its duties.

➔Section 53. KRS 335.050 is amended to read as follows:

- (1) There is hereby created the Kentucky Board of Social Work, consisting of seven (7) members appointed by the Governor. One (1) member shall be a certified social worker under the provisions of KRS 335.010 to 335.160 and 335.990. One (1) member shall be a licensed social worker under the provisions of KRS 335.010 to 335.160 and 335.990. One (1) member shall be a licensed clinical social worker licensed under the provisions of KRS 335.010 to 335.160 and 335.990. Three (3) members shall be persons licensed by the board at any level, at the discretion of the Governor. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. With the exception of the citizen at large, each member shall be appointed from a list of names of qualified persons submitted by any interested parties. The Governor may request the submission of additional names.
- (2) Members of the board shall be appointed for terms of four (4) years except appointments to fill vacancies caused by a reason other than the expiration of a member's term. Upon recommendation of the board, made after notice and hearing, the Governor may remove any member of the board for incompetence, neglect of duty, or malfeasance in office.
- (3) All vacancies shall be filled by the Governor.
- (4) The board shall organize upon appointment and qualification of its members, and shall elect annually from its membership a chairman, vice chairman, and a secretary. The board shall meet as frequently as it deems necessary, but not less than two (2) times each year, at such times and places as the board designates. Additional meetings may be held upon call of the chairman or upon the written request of three (3) members of the board. Four (4) members of the board shall constitute a quorum.
- (5) The board may be attached, for administrative purposes, to the Division of Occupations and Professions in the *Environmental and Public Protection*~~Finance and Administration~~ Cabinet ~~pursuant to the provisions of KRS 42.066~~.

➔Section 54. KRS 335.325 is amended to read as follows:

The board may:

- (1) Employ needed personnel and contract with the Division of Occupations and Professions within the ***Environmental and Public Protection Cabinet***~~[Department of Finance and Administration]~~ for the provision of administrative services;
- (2) Issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of this chapter;
- (3) Seek injunctive relief in Franklin Circuit Court to stop the unlawful practice of marriage and family therapy by unlicensed persons;
- (4) Conduct hearings pursuant to KRS Chapter 13B and keep records and minutes necessary to carry out the functions of this chapter;
- (5) Suspend or revoke licenses or permits or impose supervisory or probationary conditions upon licensees or permit holders, or impose administrative disciplinary fines, issue written reprimands or admonishments, or any combination thereof;
- (6) Grant retired or inactive licensure status under conditions set forth by the board by the promulgation of administrative regulations;
- (7) Enter into reciprocal agreements with boards of marriage and family therapy in other states having licensure qualifications and requirements that meet or exceed those provided in this chapter;
- (8) Organize itself into two (2) panels to separate the functions of inquiry and hearings. Each panel shall have the power to act as either an inquiry or hearing panel. No member serving on the inquiry panel shall serve on the hearing panel for any one particular case. Any final decision of the hearing panel shall be considered as the final decision of the board and the hearing panel may exercise all powers granted to the board pursuant to KRS Chapter 13B; and
- (9) Utilize mediation as a technique to resolve disciplinary matters.

➔Section 55. KRS 335.615 is amended to read as follows:

The board shall meet at least twice a year, in the spring and the fall. The board shall elect a chair at the fall meeting who shall serve a one (1) year term. The board shall:

- (1) Approve or deny applications for certification submitted according to the provisions of KRS 335.600 to 335.699;
- (2) Approve the examination required of applicants for certification, provide for the administration and grading of the examination, and provide for other matters relating to certification in the profession of fee-based pastoral counseling as promulgated in administrative regulations;
- (3) Review the credentials of certificate holders to determine eligibility for certification renewal, including payment of fees authorized in KRS 335.625;
- (4) Certify those fee-based pastoral counseling applicants who satisfy the requirements of KRS 335.600 to 335.699, including payment of fees authorized in KRS 335.620;
- (5) Adopt a code of ethics for certified fee-based pastoral counselors by promulgation of administrative regulations;
- (6) Promulgate administrative regulations, in accordance with KRS Chapter 13A, to implement the purposes of KRS 335.600 to 335.699;
- (7) Contract with the Division of Occupations and Professions within the ***Environmental and Public Protection***~~[Finance and Administration]~~ Cabinet for the provision of administrative services;
- (8) Investigate suspected violations of KRS 335.600 to 335.699;
- (9) Institute and maintain actions to restrain or enjoin persons who violate the certification provisions of KRS 335.600 to 335.699; and
- (10) Submit an annual report to the Governor and to the Legislative Research Commission by January 1 of each year, listing all hearings conducted by the board, any decisions rendered, and a current roster of all certified fee-based pastoral counselors.

➔Section 56. The following KRS sections are repealed:

- 8.030 Governor's Advisory Committee on Intergovernmental Relations -- Membership -- Functions -- Chairman.
- 11.512 Office of the 911 Coordinator -- Duties.
- 56.600 Central State Hospital Recovery Authority -- Board.
- 56.601 Powers of board.
- 56.602 Attachment of authority to Finance and Administration Cabinet.
- 56.603 Expiration of KRS 56.600 to 56.602 and abolition of authority.
- 131.071 Office of the Taxpayer Ombudsman -- Qualifications and duties of tax ombudsman.
- 154.33-600 Definitions for KRS 154.33-600 to 154.33-609.
- 154.33-601 Red Fox Tri-County Cooperative Corporation.
- 154.33-603 Board of directors -- Members -- Terms -- Compensation.
- 154.33-605 Operation of board -- Participation of corporation's employees in Kentucky Employees Retirement System.
- 154.33-607 Powers and duties of corporation.
- 154.33-609 Use of corporate revenues -- Annual audit by State Auditor.
- 293.010 Legislative intent.
- 293.020 Definitions in KRS Chapter 293.
- 293.030 Kentucky Savings Bond Authority established.
- 293.040 Authority -- Membership -- Appointment -- Qualifications.
- 293.050 Removal of commissioner from office -- Suspension.
- 293.060 Officers of authority -- Election -- Quorum.
- 293.070 Commissioner and treasurer to execute surety bond.
- 293.080 Commissioners -- Compensation.
- 293.090 Officers, agents, and employees -- Contracts with financial institutions.
- 293.100 Powers and duties of authority.
- 293.110 Issuance of bonds -- Denominations.
- 293.120 Bonds issued and redeemed by bank acting as agent -- Fees.
- 293.130 Payment and redemption fund -- Operating fund.
- 293.140 Operating fund -- Excess.
- 293.150 Proceeds not taxable.
- 293.160 Trust agreement with bank.
- 293.170 Authority to borrow.

➔Section 57. The secretary of the Finance and Administration Cabinet is directed to review each executive branch agency's information technology structure and to consolidate operational control under the Commonwealth Office of Technology when it is found to be in the best interest of the Commonwealth.

➔Section 58. The General Assembly confirms the Governor's Executive Order 2008-506, dated June 6, 2008, to the extent it is not otherwise confirmed or repealed by this Act.

➔Section 59. In order to reflect the reorganization effectuated by this Act, the reviser of statutes shall replace references in the Kentucky Revised Statutes to the agencies, subagencies, and officers affected by this Act with references to the appropriate successor agencies, subagencies, and officers established by this Act. The reviser of

statutes shall base these actions on the functions assigned to the new entities in this Act and may consult with officers of the affected agencies, or their designees, to receive suggestions.

**Signed by the Governor March 17, 2009.**

## CHAPTER 13

(SB 182)

AN ACT relating to reorganization.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
4. Department of Law.
  - (a) Attorney General.
5. Department of the Treasury.
  - (a) Treasurer.
6. Department of Agriculture.
  - (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
7. Auditor of Public Accounts.

II. Program cabinets headed by appointed officers:

1. Justice and Public Safety Cabinet:
  - (a) Department of Kentucky State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Office of Drug Control Policy.

- (g) Office of Legal Services.
  - (h) Office of the Kentucky State Medical Examiner.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Office of Legislative and Intergovernmental Services.
  - (l) Office of Management and Administrative Services.
  - (m) Office of Public Safety Training.
  - (n) Office of Investigations.
  - (o) Department of Kentucky Vehicle Enforcement.
  - (p) Department for Public Advocacy.
2. Education Cabinet:
- (a) Office of the Secretary.
  - (b) Office of Legal Services.
    - 1. Client Assistance Program.
  - (c) Office of Communication.
  - (d) Office of Legislative and Intergovernmental Affairs.
  - (e) Office of Budget and Administration.
    - 1. Division of Human Resources.
    - 2. Division of Administrative Services.
    - 3. Division of Technology Services.
  - (f) Board of Directors for the Center for School Safety.
  - (g) Council on Postsecondary Education.
    - 1. Foundation for Adult Education.
  - (h) Department of Education.
    - 1. Kentucky Board of Education.
  - (i) Department for Libraries and Archives.
  - (j) Department of Workforce Investment.
    - 1. Office for the Blind.
    - 2. Office of Vocational Rehabilitation.
    - 3. Office of Career and Technical Education.
    - 4. Office of Employment and Training.
  - (k) Foundation for Workforce Development.
  - (l) Kentucky Office for the Blind State Rehabilitation Council.
  - (m) Kentucky Technical Education Personnel Board.
  - (n) Kentucky Workforce Investment Board.
  - (o) Statewide Council for Vocational Rehabilitation.
  - (p) Statewide Independent Living Council.
  - (q) Unemployment Insurance Commission.

- (r) Education Professional Standards Board.
    - 1. Division of Educator Preparation.
    - 2. Division of Certification.
    - 3. Division of Professional Learning and Assessment.
    - 4. Division of Legal Services.
  - (s) Kentucky Commission on the Deaf and Hard of Hearing.
  - (t) Kentucky Educational Television.
  - (u) Kentucky Environmental Education Council.
3. Environmental and Public Protection Cabinet:
- (a) Office of the Secretary.
    - 1. Office of Legislative and Intergovernmental Affairs.
    - 2. Office of Communications and Public Outreach.
    - 3. Office of Regulatory Affairs.
    - 4. Office of Legal Services.
    - 5. Office of Administrative and Information Services.
    - 6. Office of Administrative Hearings.
    - 7. Office of Inspector General.
    - 8. Mine Safety Review Commission.
    - 9. Workers' Compensation Board.
    - 10. Kentucky State Nature Preserves Commission.
    - 11. Kentucky Environmental Quality Commission.
    - 12. Kentucky Occupational Safety and Health Review Commission.
  - (b) Department for Environmental Protection.
    - 1. Office of the Commissioner.
    - 2. Division of Air Quality.
    - 3. Division of Water.
    - 4. Division of Environmental Services.
    - 5. Division of Waste Management.
    - 6. Division of Enforcement.
    - 7. Division of Compliance Assistance.
  - (c) Department for Natural Resources.
    - 1. Office of the Commissioner.
    - 2. Office of Technical and Administrative Support.
    - 3. Division of Mine Permits.
    - 4. Division of Mine Reclamation and Enforcement.
    - 5. Division of Abandoned Mine Lands.
    - 6. Division of Oil and Gas Conservation.
    - 7. Office of Mine Safety and Licensing.

- 8. Division of Forestry.
- 9. Division of Conservation.
- (d) Department of Public Protection.
  - 1. Office of the Commissioner.
  - 2. Division of Administrative Services.
  - 3. Crime Victims Compensation Board.
  - 4. Board of Claims.
  - 5. Board of Tax Appeals.
  - 6. Kentucky Boxing and Wrestling Authority.
  - 7. Kentucky Horse Racing Authority.
  - 8. Kentucky Public Service Commission.
  - 9. Office of Alcoholic Beverage Control.
  - 10. Office of Charitable Gaming.
  - 11. Office of Financial Institutions.
  - 12. Office of Housing, Buildings and Construction.
  - 13. Office of Insurance.
- (e) Department of Labor.
  - 1. Office of the Commissioner.
  - 2. Office of Occupational Safety and Health.
  - 3. Office of Labor Management Relations and Mediation.
  - 4. Office of Workplace Standards.
  - 5. Office of Workers' Claims.
  - 6. Workers' Compensation Funding Commission.
  - 7. Kentucky Labor Management Advisory Council.
  - 8. Occupational Safety and Health Standards Board.
  - 9. Prevailing Wage Review Board.
  - 10. Kentucky Employees Insurance Association.
  - 11. Apprenticeship and Training Council.
  - 12. State Labor Relations Board.
  - 13. Workers' Compensation Advisory Council.
  - 14. Workers' Compensation Nominating Commission.
  - 15. Employers' Mutual Insurance Authority.
  - 16. Division of Administrative Services.
- 4. Transportation Cabinet:
  - (a) Department of Highways.
    - 1. ~~Office of Program Planning and Management.~~
    - 2. Office of Project Development.
    - 2. ~~3.~~ Office of *Project Delivery and Preservation* ~~[Construction and Operations].~~

- 3.~~4.~~ Office of **Highway Safety**~~[Intermodal Programs]~~.
- 4.~~5.~~ Highway District Offices One through Twelve.
- (b) Department of Vehicle Regulation.
- (c)~~Department of Administrative Services.~~
- ~~(d)~~ Department of Aviation.
- (d)~~(e)~~ Department of **Rural and Municipal Aid**~~[Intergovernmental Programs]~~.
  - 1. Office of **Local**~~[Transportation Enhancement]~~ Programs.
  - 2. Office of Rural and Secondary Roads.
- (e)~~(f)~~ Office of the Secretary.
  - 1.~~Office of Legislative and Intergovernmental Affairs.~~
  - 2. Office of Public Affairs.
  - 2.~~3.~~~~Office of Transportation Delivery.~~
  - 4. Office for **Civil Rights and Small Business**~~[and Occupational]~~ Development.
  - 3.~~5.~~ Office of Budget and Fiscal Management.
  - ~~6.~~~~Office of Legal Services.]~~
  - 4.~~7.~~ Office of Inspector General.
  - ~~8.~~~~Office of the Transportation Operations Center.~~
  - ~~9.~~~~Office of Personnel Management.]~~
- (f) **Office of Support Services.**
- (g) **Office of Transportation Delivery.**
- (h) **Office of Audits.**
- (i) **Office of Human Resource Management.**
- (j) **Office of Information Technology.**
- (k) **Office of Legal Services.**
- 5. Cabinet for Economic Development:
  - (a) Office of Administration and Support.
  - (b) Department for New Business Development.
  - (c) Department of Financial Incentives.
  - (d) Department for Existing Business Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
  - (g) Office of Research and Information Technology.
  - (h) Department of Commercialization and Innovation.
  - (i) Office of Legal Services.
  - (j) Commission on Small Business Advocacy.
- 6. Cabinet for Health and Family Services:
  - (a) Department for Public Health.
  - (b) Department for Medicaid Services.

- (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission for Children with Special Health Care Needs.
  - (e) Office of Health Policy.
  - (f) Office of the Secretary.
  - (g) Office of Legal Services.
  - (h) Office of Inspector General.
  - (i) Office of Legislative and Public Affairs.
  - (j) Department for Community Based Services.
  - (k) Department for Disability Determination Services.
  - (l) Office of the Ombudsman.
  - (m) Department for Human Support Services.
  - (n) Kentucky Commission on Community Volunteerism and Service.
  - (o) Office of Fiscal Services.
  - (p) Office of Human Resource Management.
  - (q) Office of Technology.
  - (r) Office of Contract Oversight.
  - (s) Governor's Office of Wellness and Physical Activity.
  - (t) Department for Aging and Independent Living.
7. Finance and Administration Cabinet:
- (a) Office of General Counsel.
  - (b) Office of the Controller.
  - (c) Office of Administrative Services.
  - (d) Office of Public Information.
  - (e) Department for Facilities and Support Services.
  - (f) Department of Revenue.
  - (g) Commonwealth Office of Technology.
  - (h) State Property and Buildings Commission.
  - (i) Kentucky Savings Bond Authority.
  - (j) Office of Equal Employment Opportunity and Contract Compliance.
  - (k) Kentucky Employees Retirement Systems.
  - (l) Commonwealth Credit Union.
  - (m) State Investment Commission.
  - (n) Kentucky Housing Corporation.
  - (o) Kentucky Local Correctional Facilities Construction Authority.
  - (p) Kentucky Turnpike Authority.
  - (q) Historic Properties Advisory Commission.
  - (r) Kentucky Tobacco Settlement Trust Corporation.
  - (s) State Board for Proprietary Education.

- (t) Kentucky Higher Education Assistance Authority.
  - (u) Kentucky River Authority.
  - (v) Kentucky Teachers' Retirement System Board of Trustees.
8. Commerce Cabinet:
- (a) Department of Tourism.
    - (1) Division of Tourism Services.
    - (2) Division of Marketing and Advertising.
    - (3) Division of Parks Marketing.
  - (b) Kentucky Department of Parks.
    - (1) Division of Information Technology.
    - (2) Division of Personnel and Payroll.
    - (3) Division of Financial Operations.
    - (4) Division of Facilities Management.
    - (5) Division of Facilities Maintenance.
    - (6) Division of Customer Services.
    - (7) Division of Recreation.
    - (8) Division of Golf Courses.
    - (9) Division of Food Services.
    - (10) Division of Rangers.
    - (11) Division of Eastern Parks.
    - (12) Division of Southern Parks.
    - (13) Division of Western Parks.
  - (c) Department of Fish and Wildlife Resources.
    - (1) Division of Law Enforcement.
    - (2) Division of Administrative Services.
    - (3) Division of Engineering.
    - (4) Division of Fisheries.
    - (5) Division of Information and Education.
    - (6) Division of Wildlife.
    - (7) Division of Public Affairs.
  - (d) Kentucky Horse Park.
    - (1) Division of Support Services.
    - (2) Division of Buildings and Grounds.
    - (3) Division of Operational Services.
  - (e) Kentucky State Fair Board.
    - (1) Division of Expositions and Admission.
    - (2) Division of Kentucky Fair and Exposition Center Operations.
    - (3) Division of Commonwealth Convention Center.

## ACTS OF THE GENERAL ASSEMBLY

- (4) Division of Public Relations and Media.
  - (5) Division of Administrative Services.
  - (6) Division of Personnel Management and Staff Development.
  - (7) Division of Sales.
  - (8) Division of Security and Traffic Control.
  - (f) Office of the Secretary.
  - (g) Office of Finance and Administration.
  - (h) Office of Legal Affairs.
  - (i) Office of Intergovernmental Affairs.
  - (j) Office of Human Resources.
  - (k) Office of Public Affairs and Constituent Services.
  - (l) Office of Information Technology.
  - (m) Office of the Kentucky Sports Authority.
    - (1) Kentucky Sports Authority Board.
  - (n) Office of Creative Services.
  - (o) Office of Capital Plaza Operations.
  - (p) Office of Arts and Cultural Heritage.
  - (q) Kentucky African-American Heritage Commission.
  - (r) Kentucky Foundation for the Arts.
  - (s) Kentucky Humanities Council.
  - (t) Kentucky Heritage Council.
  - (u) Kentucky Arts Council.
  - (v) Kentucky Historical Society.
    - (1) Division of Museums.
    - (2) Division of Oral History and Educational Outreach.
    - (3) Division of Research and Publications.
    - (4) Division of Administration.
  - (w) Kentucky Center for the Arts.
    - (1) Division of Governor's School for the Arts.
  - (x) Kentucky Artisans Center at Berea.
  - (y) Martin Luther King Commission.
  - (z) Northern Kentucky Convention Center.
  - (aa) Eastern Kentucky Exposition Center.
9. Personnel Cabinet:
- (a) Office of the Secretary.
  - (b) Department for Personnel Administration.
  - (c) Office for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.

- (e) Office of Administrative Services.
- (f) Office of Legal Services.
- (g) Office of Government Training.
- (h) Department for Employee Insurance.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Governor's Office for Local Development.
- 3. Kentucky Commission on Human Rights.
- 4. Kentucky Commission on Women.
- 5. Department of Veterans' Affairs.
- 6. Kentucky Commission on Military Affairs.
- 7. Office of Minority Empowerment.
- 8. Governor's Council on Wellness and Physical Activity.

➔Section 2. KRS 12.040 is amended to read as follows:

- (1) The heads of departments shall have direction and control of their respective departments, and through their departments shall exercise the powers and perform the duties vested in the departments under their direction and control. Except as otherwise expressly provided by law, the heads of departments shall be appointed by the Governor for terms not exceeding four (4) years on the basis of their merit and fitness to perform the duties of their respective offices.
- (2) Each department head shall maintain a pattern of organization capable of receiving the attachment of administrative bodies that have functions related to the general function of his department.
- (3) Within the resources of his department, each department head shall provide administrative bodies in his department with such facilities and services as will enable those bodies to carry out the functions with which they are charged.
- (4) The heads of all departments shall exercise supervision over the personnel and financial records of their respective departments.
- (5) In case of a vacancy or in the absence or disability of the head of a department, the Governor may authorize the head of a division or other administrative officer to act as head of the department.
- (6) ***When required by statute to appoint the head of an office, the Governor shall appoint an executive director for a term not exceeding four (4) years on the basis of merit and fitness to perform the duties of the office.***

➔Section 3. KRS 174.020 is amended to read as follows:

- (1) The Transportation Cabinet shall consist of the following major organizational units:
  - (a) The Office of the Secretary, which shall include, but not be limited to:
    - 1. The secretary to be appointed by the Governor under KRS 12.255; and
    - 2. The deputy secretary appointed under KRS 12.040;
  - (b) The Department of Highways, headed by a commissioner, appointed by the Governor under KRS 12.040~~[on the recommendation of the secretary];~~
  - (c) The Department of Vehicle Regulation, headed by a commissioner, appointed by the ~~secretary with the approval of the~~ Governor~~;~~<sup>[;]</sup> ***The Motor Vehicle Commission established in KRS 190.058 shall be attached to the Department of Vehicle Regulation for administrative purposes;***
  - (d) The Department of ***Rural and Municipal Aid***~~[Intergovernmental Programs]~~, headed by a commissioner appointed by the Governor under KRS 12.040. ***The Motor Vehicle Commission established in KRS 190.058 shall be attached to the Department of Vehicle Regulation for administrative purposes.***<sup>[;]</sup>

- (e) The Department of Aviation, headed by a commissioner appointed by the Governor under KRS 12.040. The Kentucky Airport Zoning Commission established by KRS 183.861 shall be attached to the Department of Aviation for administrative purposes;
  - (f) *The Office of Support Services, headed by an executive director appointed under KRS 12.040;*
  - (g) *The Office of Transportation Delivery, headed by an executive director appointed under KRS 12.040;*
  - (h) *The Office of Audits, headed by an executive director appointed under KRS 12.040;*
  - (i) *The Office of Human Resource Management, headed by an executive director appointed under KRS 12.040;*
  - (j) *The Office of Information Technology, headed by an executive director appointed under KRS 12.040;*
  - (k) *The Office of Legal Services, headed by an executive director appointed under KRS 12.040*~~The Department of Administrative Services, headed by a commissioner appointed by the Governor under KRS 12.040;~~
- (l)~~(g)~~ The following offices, which shall be attached to the Office of the Secretary:
1. The Office of Public Affairs, headed by an executive director appointed under KRS 12.040;
  2. The Office of Budget and Fiscal Management, headed by an executive director appointed under KRS 12.040;
  - 3.~~1.~~ ~~The Office of Transportation Delivery, headed by an executive director appointed under KRS 12.040;~~
  - 4.~~2.~~ ~~The Office of Legislative and Intergovernmental Affairs, headed by an executive director appointed under KRS 12.040;~~
  - 5.~~3.~~ The Office for *Civil Rights and Small Business* ~~and Occupational~~ Development, headed by an executive director appointed under KRS 12.040; *and*
  - 4.~~6.~~ ~~The Office of Legal Services, headed by an executive director appointed under KRS 12.040;~~
  - 7.~~4.~~ The Office of Inspector General, headed by an executive director appointed under KRS 12.040;
  - 8.~~5.~~ ~~The Office of Transportation Operations Center, headed by an executive director appointed under KRS 12.040; and~~
  - 9.~~7.~~ ~~The Office of Personnel Management, headed by an executive director appointed under KRS 12.040;~~
- (m)~~(h)~~ The following offices, which shall be attached to the Department of Highways:
- 1.~~1.~~ ~~The Office of Program Planning and Management, headed by an executive director appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322, and known as the deputy state highway engineer for program planning and management;~~
  - 2.~~2.~~ The Office of Project Development, headed by an executive director appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322, and who shall be known as the deputy state highway engineer for project development;
  - 2.~~3.~~ The Office of *Project Delivery and Preservation*~~Construction and Operations~~, headed by an executive director appointed under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322, and who shall be known as the deputy state highway engineer for *project delivery and preservation*~~construction and operations~~;
  - 3.~~4.~~ The Office of *Highway Safety*~~Intermodal Programs~~, headed by an executive director appointed under KRS 12.040~~, who shall be a registered professional engineer under KRS Chapter 322, and who shall be known as the deputy state highway engineer for intermodal programs~~; and
  - 4.~~5.~~ Highway District Offices One through Twelve, each district office to be headed by *an executive director, also known as the*~~the~~ chief~~highway~~ district engineer, appointed *under KRS 12.040, who shall be a registered professional engineer under KRS Chapter 322*~~by the secretary upon~~

~~the recommendation of the commissioner and the state highway engineer, with the approval of the Governor}; and~~

(n)~~(i)~~ The following offices, which shall be attached to the Department of **Rural and Municipal Aid**~~Intergovernmental Programs~~:

1. Office of **Local**~~Transportation Enhancement~~ Programs, headed by an executive director appointed under KRS 12.040; and
2. Office of Rural and Secondary Roads, headed by an executive director appointed under KRS 12.040.

(2) The ~~position~~~~positions~~ of director in the ~~Division of Fleet Management, Division of Professional Services, and~~ Division of Environmental Analysis ~~is a~~~~are~~ policy-making ~~position~~~~positions~~ under KRS 18A.175.

➔Section 4. KRS 174.016 is amended to read as follows:

- (1) The Office of Rural and Secondary Roads within the Department of **Rural and Municipal Aid**~~Intergovernmental Programs~~ shall be responsible for the development and implementation of the Rural Secondary Program and such other functions as are assigned by the secretary, except that the department shall not have jurisdiction over the County Road Aid Program or Municipal Road Aid Program unless an agreement initiated by a county or municipality is in effect.
- (2) The Department of **Rural and Municipal Aid**~~Intergovernmental Programs~~ shall include an assistant state highway engineer for rural and municipal aid appointed pursuant to KRS Chapter 12 by the secretary upon the recommendation of the state highway engineer of the Department of Highways.

➔Section 5. KRS 174.040 is amended to read as follows:

The secretary shall have any and all necessary power and authority, subject to appropriate provisions of the statutes, to create such positions and to employ the necessary personnel in such positions to enable the secretary to perform the functions of the cabinet. The commissioner of the Department of Highways, ~~shall serve as chief deputy secretary of the cabinet.~~ the commissioner of the Department of **Rural and Municipal Aid**~~Intergovernmental Programs~~ and the commissioner of the Department of Vehicle Regulation may be designated as deputy secretaries for operational purposes.

➔Section 6. KRS 174.057 is amended to read as follows:

The Transportation Cabinet shall have the responsibility of regulating railroads within the Commonwealth. The cabinet shall delegate *to the Division of Planning within the Department of Highways'* Office of **Project Development the powers necessary**~~Intermodal Programs~~ to carry out the provisions of this section. The secretary may employ such personnel as necessary to perform the duties, functions, and responsibilities associated with the regulation of railroads. The ~~division~~~~office~~ shall have all the powers previously vested in the Kentucky Railroad Commission. The cabinet shall promulgate administrative regulations under KRS Chapter 13A to carry out the provisions of this section.

➔Section 7. KRS 174.135 is amended to read as follows:

The ~~executive~~ director of the **Division of Incident Management within the Department of Highways'** Office of **Highway Safety**~~the Transportation Operations Center~~ shall be responsible for statewide transportation emergency and critical incident information and systems control. The ~~executive~~ director:

- (1) Shall be directly responsible and report to the **executive director of the Office of Highway Safety**~~secretary~~; and
- (2) May, with the approval of the **executive director**~~secretary~~, employ the staff necessary to perform the duties, functions, and responsibilities of the ~~division~~~~office~~.

➔Section 8. KRS 176.506 is amended to read as follows:

- (1) The Motorcycle Advisory Commission for Highway Safety shall be composed of seven (7) members, appointed as follows:
  - (a) One (1) representative of the Office of **Project Delivery and Preservation**~~Construction and Operations~~ within the Kentucky Transportation Cabinet's Department of Highways, appointed by the Governor;

- (b) One (1) representative of the Office of Project Development within the Kentucky Transportation Cabinet's Department of Highways, appointed by the Governor;
  - (c) One (1) representative of the Department of Kentucky State Police, appointed by the Governor;
  - (d) Two (2) representatives of the Kentucky Motorcycle Association, to be appointed by the Governor from a list of five (5) nominees selected by the association;
  - (e) One (1) member of the Kentucky Motorcycle Safety Education Advisory Commission, appointed by the Governor; and
  - (f) One (1) representative of the Kentucky Association of Highway Contractors, to be appointed by the Governor from a list of five (5) nominees selected by the association.
- (2) ~~Except for initial appointments as provided for in 2003 Ky. Acts ch. 122, sec. 3, ]~~Members of the Motorcycle Advisory Commission for Highway Safety shall serve a term of four (4) years. Sitting members shall be eligible to succeed themselves.
- (3) Commission members shall receive no compensation for their services and shall not be compensated for expenses incurred from travel or in connection with the performance of their duties as commission members.
- (4) The commission shall elect its chair and vice chair from its membership.
- (5) The commission shall meet quarterly or upon the call of the chair or the request of the secretary of the Transportation Cabinet.
- (6) A majority of the members of the commission constitutes a quorum and the commission may make recommendations only at meetings where a quorum is present.
- (7) The commission shall keep a record of its meetings and recommendations.
- (8) For administrative purposes, the commission shall be attached to the ~~{Transportation Cabinet's}~~ Office of **Highway Safety within the Department of Highways**~~{the Secretary}~~.

➔Section 9. KRS 177.020 is amended to read as follows:

- (1) The state primary road system shall consist of such public roads and city streets within the state as the Department of Highways determines shall be established, constructed, or maintained by the Department of Highways.
- (2) The department shall, in its discretion, determine which public roads, or city streets, shall be established, constructed, or maintained by it, and shall determine the type of construction or maintenance for that road or city street.
- (3) In the establishment of the state primary road system, the Department of Highways is authorized to select new routes, deviate from an existing route whenever it deems such deviation proper, eliminate from the state primary system roads or city streets which have been replaced as proper part of the system by the construction of a new facility or the selection of a new route. No permanent ingress or egress ramp of the state primary road system on fully controlled access facilities shall be closed, except for repairs, unless a public hearing is first held in the area to be affected by the closing. The Department of Highways shall, at least twenty (20) days before the hearing, advertise in a newspaper of general circulation in the area to be affected by the closing, the date, time, and place of the hearing.
- (4) Prior to the advertisement for bids on any highway construction project, the Department of Highways shall meet with the fiscal court in the jurisdiction of the construction project for the purpose of advising the fiscal court of any state road or road segment which the department may seek to eliminate from the state primary road system upon completion of that highway construction project. The requirement of this subsection shall be in addition to the requirements of subsection (5) of this section.
- (5) The department shall notify the fiscal court of the county at least four (4) months before it eliminates a road, road segment, bridge, or street in that county from the state primary road system. Upon receiving notice, the fiscal court may reject title and notify the department that the road shall not become part of the county road system. If the fiscal court declines, the department shall give notice to all private persons entitled to a necessary access over this road of their rights under this chapter; and, by petition of any private party entitled to such access, the road shall be deemed a discontinued state road and shall be closed to public use but remain open in accordance with its condition and use for the access of the private parties involved. In the absence of such

petition, title shall be transferred to the owner or owners of the tract or tracts of land to which the road originally belonged.

- (6) As used in this section, the term "rural secondary roads" shall mean ~~the~~<sup>such</sup> system of roads in this state which are usually considered farm-to-market roads and that ~~are~~<sup>were</sup> classified as part of the rural secondary road system by the Department of Highways ~~on January 1, 1986. By January 1, 1987, the Department of Intergovernmental Programs shall meet with the fiscal courts in each of the counties to receive recommendations regarding the transfer of roads, included as part of the county road system on January 1, 1986, to the rural secondary system. Prior to such meeting with the Department of Intergovernmental Programs, the fiscal court shall consult with the legislative bodies of municipalities within the county regarding their recommendations for the transfer of county roads located within the jurisdiction of the municipality. On July 1, 1987, the Transportation Cabinet shall by official order accept at least two thousand (2,000) miles of roads in the county road system into the rural secondary system. In accepting such roads into the rural secondary system, the Transportation Cabinet shall accept in each county at least seventy five percent (75%) of the total number of miles in each county determined by multiplying the total number of county road miles accepted in the rural secondary system by the percentage of county road aid funds received in each county in fiscal year 1984-85 compared to the total amount of county road aid funds generated in fiscal year 1984-85. The determination of the total funds received by each county from the county road aid program in fiscal year 1984-85 and the total amount of county road aid funds generated in fiscal year 1984-85 shall be made by the Department of Intergovernmental Programs].~~ The roads *in the rural secondary system* ~~{so transferred}~~ shall be maintained with the proceeds of the provisions of KRS 177.320(1) and in no case shall the rural secondary system, as defined in this subsection, be less than eleven thousand eight hundred (11,800) miles.
- (7) The establishment, construction, or maintenance of the state primary road system shall be under the direction and control of the Department of Highways. The commissioner of highways is authorized to adopt regulations necessary to the administration of this authority.

➔Section 10. KRS 177.330 is amended to read as follows:

- (1) At least once in each calendar year, the Department of *Rural and Municipal Aid* ~~{Intergovernmental Programs}~~, through a duly-authorized representative, shall consult with the fiscal courts of the various counties for the purpose of receiving recommendations from the fiscal courts for the selection of rural and secondary roads lying within the counties for construction, reconstruction, or maintenance under the Rural and Secondary Road Program as set forth in KRS 177.320(1). The Department of *Rural and Municipal Aid* ~~{Intergovernmental Programs}~~ may receive recommendations from any citizen on the selection of rural and secondary roads for construction, reconstruction, or maintenance under the Rural and Secondary Road Program. The Department of Highways shall notify each county fiscal court of the county roads that the department intends to construct, reconstruct, or maintain in accordance with the provisions of KRS Chapters 177 and 179.
- (2) Where the construction of a secondary or rural road through an incorporated town of the fifth or sixth class is necessary, as determined by the Department of *Rural and Municipal Aid* ~~{Intergovernmental Programs}~~, the road may be constructed, reconstructed, or maintained at the discretion of the Department of *Rural and Municipal Aid* ~~{Intergovernmental Programs}~~.

➔Section 11. KRS 177.340 is amended to read as follows:

If, within thirty (30) days after consulting with a fiscal court, the Department of *Rural and Municipal Aid* ~~{Intergovernmental Programs}~~ and the fiscal court ~~{shall}~~ fail to agree on the selection of any rural and secondary roads for construction, reconstruction, or maintenance under the Rural and Secondary Road Program, the department may proceed toward the construction, reconstruction, or maintenance of any road, which, in its discretion, is essential to a system of secondary highways. Rural and secondary roads ~~{,}~~ constructed, reconstructed, or maintained in accordance with *an* agreement between the affected county and the Department of *Rural and Municipal Aid* ~~{Intergovernmental Programs}~~, or selected for construction, reconstruction, or maintenance by the Department of *Rural and Municipal Aid* ~~{Intergovernmental Programs}~~, at its discretion, without agreement with the affected county, may become a part of the highway system of the Commonwealth of Kentucky at the discretion of the Department of Highways.

➔Section 12. KRS 177.350 is amended to read as follows:

The Department of ***Rural and Municipal Aid***~~[Intergovernmental Programs]~~ may promulgate administrative regulations pursuant to KRS Chapter 13A to establish standards for the construction, reconstruction, maintenance, and improvement of rural and secondary roads in the Commonwealth of Kentucky. The department shall conduct studies, make surveys, prepare maps, employ personnel, and obtain equipment as may be necessary for the establishment and maintenance of an integrated system of secondary and rural roads in the Commonwealth of Kentucky.

➔Section 13. KRS 177.360 is amended to read as follows:

- (1) Except as provided in subsection (5) of this section, the Department of ***Rural and Municipal Aid***~~[Intergovernmental Programs]~~ shall allocate the funds set apart under KRS 177.320(1) for construction, reconstruction, and maintenance of state-maintained secondary and rural highways as follows:
  - (a) One-fifth (1/5) shall be apportioned equally among the one hundred twenty (120) counties.
  - (b) One-fifth (1/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio which the rural population of each county bears to the total rural population of the state. "Rural population" as used here means the population in a county outside cities, towns, and urban areas having a population of twenty-five hundred (2,500) or more as shown by the most recent decennial census of the United States Bureau of the Census, and county population shall be determined by the most recent decennial census of the United States Bureau of the Census.
  - (c) One-fifth (1/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio that the public road mileage outside of cities, towns, and urban areas having a population of twenty-five hundred (2,500) or more bears to the total mileage of such roads for the entire state.
  - (d) Two-fifths (2/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio which the square-mile rural area of the county bears to the total square-mile rural area of the state. "Rural area" as used here means that area of the county outside of cities, towns, and urban areas having a population of twenty-five hundred (2,500) or more and shown by the most recent decennial census of the United States Bureau of the Census.
- (2) A sum not exceeding six percent (6%) of the allocation provided by KRS 177.320(1) to each county shall be deducted at the beginning of each fiscal year and adjusted quarterly to cover the maintenance, administrative, engineering, and other costs of the program.
- (3) Of the total amount apportioned by the provisions of this section, a sum not exceeding six percent (6%) may be deducted and placed by the Department of ***Rural and Municipal Aid***~~[Intergovernmental Programs]~~ in a special emergency account to be expended at the direction of the commissioner to meet unforeseen emergencies on rural and secondary roads and bridges.
- (4) Apportionments as required by the provisions of this section shall be made on the basis of revenue estimates supplied by the Finance and Administration Cabinet and adjusted quarterly in accordance with the most recent revision of the estimates by the Finance and Administration Cabinet.
- (5) Any county eligible to receive county road aid moneys in accordance with KRS 177.320 and this section shall be required to submit a uniform financial information report to the Governor's Office for Local Development in accordance with KRS 65.905 before any payment of county road aid funds shall be made. The Governor's Office for Local Development shall notify the Department of ***Rural and Municipal Aid***~~[Intergovernmental Programs]~~ no later than March 1 annually of any county that has not submitted a uniform financial information report. The Department of ***Rural and Municipal Aid***~~[Intergovernmental Programs]~~ shall, upon notification by the Governor's Office for Local Development, immediately suspend all county road aid moneys to the county until the county complies with the provisions of KRS 65.900 to 65.925 and submits the uniform financial information report to the Governor's Office for Local Development. The Governor's Office for Local Development shall immediately notify the Department of ***Rural and Municipal Aid***~~[Intergovernmental Programs]~~ to reinstate county road aid moneys to any county affected by this subsection as soon as the county submits the uniform financial information report.

➔Section 14. KRS 179.400 is amended to read as follows:

- (1) The fiscal court of any county receiving state aid shall appropriate sufficient money to keep all county roads in the county in good repair and free from obstructions. The cost of all repairs and removals of obstruction shall be paid by the treasurer of the county upon the order of the fiscal court, and all bills for repairs or for removal of obstructions shall be verified by affidavit, and shall be certified to be correct by the county engineer.

- (2) The fiscal court of any county receiving state aid may, if it deems proper, enter into contract or cooperative agreement with the Department of *Rural and Municipal Aid* ~~[Intergovernmental Programs]~~ for the construction, reconstruction and maintenance of county roads and bridges selected by the fiscal court. Any contract or cooperative agreement shall designate those roads which the department shall be required to construct, reconstruct or maintain and shall not be in excess of the projected county allotment for any one (1) fiscal year. The county shall not be responsible for payment to the department of any costs not specified with the contract or cooperative agreement.

➔Section 15. KRS 36.010 is amended to read as follows:

The Department of Military Affairs shall be attached to the Office of the Governor, have charge of and be responsible to the Governor for the proper functioning of the Kentucky National Guard, militia, and all other military or naval matters of the state, and shall consist of the following offices and divisions:

- (1) Office of Management and Administration, containing the:
  - (a) Division of Administrative Services;
  - (b) Division of Facilities;
  - (c) Bluegrass Station Division; *and*
  - (d) ~~Division of Air Transport; and~~
  - ~~(e)~~ Logistics Operations Division;
- (2) Division of Emergency Management;
- (3) Office of the Chief of Staff for Federal Army Guard;
- (4) Office of the Chief of Staff for Federal Air Guard;
- (5) Kentucky Guard Youth Challenge Division; and
- (6) Kentucky Civil Air Patrol.

In order to promote greater efficiency, economy, and improved administration, the divisional structure of the Department of Military Affairs may be changed, redesignated, or reorganized in accordance with KRS Chapter 12. Notwithstanding KRS Chapter 12, the department's attachment to the Office of Governor as a separate organizational unit not attached to any cabinet shall not be changed except by action of the General Assembly.

➔Section 16. KRS 36.400 is repealed, reenacted as a new section of KRS Chapter 174, and amended to read as follows:

As used in *Sections 16 to 21 of this Act* ~~[KRS 36.400 to 36.425]~~, unless the context otherwise requires:

- (1) "*Department*" means the *Department of Aviation* ~~[Division of Air Transport" includes the Capital City Airport]~~;
- (2) "State aircraft" means aircraft owned by the Commonwealth, leased by the Commonwealth, or otherwise under the control of the Commonwealth and administratively assigned to the *department* ~~[Division of Air Transport]~~. It shall also include air charters by the *department* ~~[division]~~. However, this shall not include or apply to any and all aircraft assigned to, owned, leased, operated, or controlled by the Department of Kentucky State Police, or otherwise under the control or direction of the Department of Kentucky State Police. The operation, maintenance, scheduling, and care of Department of Kentucky State Police aircraft shall not be included under or affected by *Sections 16 to 21 of this Act* ~~[KRS 36.400 to 36.425]~~; and
- (3) "Official business" means any activity involving travel in a state aircraft if the activity is reasonably required, expected, or appropriate, considering the nature of the using public official's job responsibilities. The activities shall include but not be limited to attendance by officials at nonpartisan ceremonial functions and events where their appearance is normally expected by virtue of their office or where official representation of the Commonwealth is otherwise appropriate, and to nonpolitical flights by the Governor and members of his immediate family when accompanying or representing him.

➔Section 17. KRS 36.405 is repealed, reenacted as a new section of KRS Chapter 174, and amended to read as follows:

- (1) The *commissioner of the department* ~~[Adjutant General of Kentucky, as executive head of the Department of Military Affairs.]~~ shall be responsible for overall policy development and supervision of the ~~[Division of Air Transport and]~~ Capital City Airport *Division*.
- (2) A division director shall head the *Capital City Airport* Division ~~[of Air Transport]~~ within the Department of *Aviation* ~~[Military Affairs]~~.
- ~~{(3) The division director shall be responsible for the management and administration of the Division of Air Transport and the Capital City Airport.}~~

➔Section 18. KRS 36.410 is repealed, reenacted as a new section of KRS Chapter 174, and amended to read as follows:

- (1) The functions of the *Capital City Airport* Division ~~[of Air Transport]~~ shall be to:
  - (a) Manage and operate the Capital City Airport;
  - (b) Oversee the maintenance and care of all state aircraft;
  - (c) Control the scheduling and operational use of state aircraft, including air charters; and
  - (d) Collect from using agencies and officers the costs of operating state aircraft, including air charters.
- (2) Subject to the approval of the *department* ~~[Adjutant General]~~ and in accordance with applicable state and federal statutes and regulations, the *Capital City Airport* Division shall promulgate administrative regulations under KRS Chapter 13A to:
  - (a) Establish user fees to be paid by users of the services and facilities of the Capital City Airport for charges including, but not limited to, hangar fees, tie-down fees, fuel, and aircraft supplies; and
  - (b) Establish fees for the usage of state aircraft.

➔Section 19. KRS 36.415 is repealed, reenacted as a new section of KRS Chapter 174, and amended to read as follows:

- (1) Except as provided in subsection (2) of this section, state aircraft, including air charters, shall be used only for official business.
- (2) State aircraft shall not be used for personal business, except when the Governor or Lieutenant Governor, for reasons of security, protocol, ceremonial functions, or overall demands of time, require travel considerations not accorded to other officials. In recognition of these realities, flights that may be solely for personal business, or partly for official business or partly for personal business, may be scheduled for the Governor or the Lieutenant Governor and their immediate families.
  - (a) The cost of flights scheduled solely for personal business of the Governor or Lieutenant Governor shall be charged to that officer in accordance with the rate schedule set forth in the administrative regulations authorized by *Section 18 of this Act* ~~[KRS 36.410]~~.
  - (b) If a particular flight is in part official business and part personal business, the Governor or the Lieutenant Governor shall make a reasonable allocation of the flight time between official and personal business and be responsible for paying with nonstate funds to the *Capital City Airport* Division ~~[of Air Transport]~~ the charge for the part of the flight that is allocable to personal business. The rate charged shall be calculated using costs that would be considered in a rate developed by a commercial air charter company. In these cases, the allocation made and the basis for the allocation shall be indicated on the aircraft request form.
- (3) Constitutional officers, other elected state officials, members of the General Assembly, officers and employees of the cabinets, departments, and agencies of state government, officers and employees of other governmental units, and other persons traveling under the auspices of a state agency or in connection with state business deemed desirable by an agency head, including dependents of state officials, and news media representatives and other persons having an interest in the official purpose of the trip may be authorized to use state aircraft. Charges for travel in state aircraft shall be paid by the requesting state agency in accordance with the rate schedule established in administrative regulations authorized by *Section 18 of this Act* ~~[KRS 36.410]~~.

➔Section 20. KRS 36.420 is repealed, reenacted as a new section of KRS Chapter 174, and amended to read as follows:

- (1) All requests for use of state aircraft shall be approved in advance by the:
  - (a) Constitutional officer;
  - (b) Program cabinet secretary or his designee in writing;
  - (c) For the judicial branch, the Chief Justice of the Supreme Court or the director of the Administrative Office of the Courts; or
  - (d) For the legislative branch, the co-chairs of the Legislative Research Commission or the director of the Legislative Research Commission.
- (2) Verbal requests for state aircraft transportation may be honored. However, all requests for state aircraft shall be provided in writing to the *Capital City Airport* Division within five (5) working days of the date of the flight.
- (3) Approving officials shall be responsible for determining that a trip is for official business, that use of state aircraft is the most appropriate means of transportation, and that the proposed passenger complement conforms to the requirements of *subsection (3) of Section 19 of this Act* ~~[KRS 36.415(3)]~~. In determining the passenger complement, requesting agencies shall weigh the benefit to the agency of the inclusion of additional passengers against the increased costs that might be incurred if a larger aircraft is required to accommodate additional passengers on a trip.
- (4) All requests for use of state aircraft shall be submitted on a form prescribed by the *Capital City Airport* Division ~~[of Air Transport]~~ and shall contain at a minimum the following information:
  - (a) Cabinet or agency name;
  - (b) Department name with appropriate billing account number;
  - (c) Purpose of the trip;
  - (d) Destination, including any planned stopovers and the reason for them;
  - (e) Names of all passengers on the flight; and
  - (f) Identification of any percentage of the flight that is for personal business in cases of the Governor or Lieutenant Governor as allowed under *Section 19 of this Act* ~~[KRS 36.415]~~.

➔Section 21. KRS 36.425 is repealed, reenacted as a new section of KRS Chapter 174, and amended to read as follows:

- (1) The *Capital City Airport* Division ~~[of Air Transport]~~ shall arrange for all trips and maintain flight cards, passenger manifests, payment documents, and interaccount bills pertaining to each flight.
- (2) Pilots for all state agencies shall maintain a flight manifest for all flights which shall include the passengers' names, information pertaining to points of origin and destination, and any side trips or stopovers for each flight.
- (3) The *Capital City Airport* Division ~~[of Air Transport]~~ shall maintain original manifests for all trips using state aircraft.
- (4) Originals of requests for the use of state aircraft shall be kept by the *Capital City Airport* Division ~~[of Air Transport]~~, with the following exceptions:
  - (a) The Governor and Lieutenant Governor shall maintain originals of all requests for the use of state aircraft made by their respective offices; and
  - (b) In cases where the secretary of the Cabinet for Economic Development has certified in an aircraft request that disclosure of the identities of passengers or the purpose of a trip will violate needs for confidentiality required for economic development efforts, the secretary of the Cabinet for Economic Development shall maintain complete original records of the request in his office.

➔SECTION 22. A NEW SECTION OF KRS CHAPTER 174 IS CREATED TO READ AS FOLLOWS:

*As used in this chapter, "cabinet" means the Transportation Cabinet.*

➔Section 23. In order to reflect the reorganization effectuated by this Act, the reviser of statutes shall replace references in the Kentucky Revised Statutes to the agencies, subagencies, and officers affected by this Act with

references to the appropriate successor agencies, subagencies, and officers established by this Act. The reviser of statutes shall base these actions on the functions assigned to the new entities by this Act and may consult with officers of the affected agencies, or their designees, to receive suggestions.

➔Section 24. Notwithstanding the provisions of KRS 12.028, the General Assembly confirms Executive Order 2008-529, dated June 16, 2008 and Executive Order 2008-510, dated June 9, 2008, to the extent that they are not otherwise confirmed or superseded by this Act.

➔Section 25. (1) It is the intent of the General Assembly that the repeal and reenactment of statutes in the Act shall not serve to void amendments made to these sections by other bills enacted during the 2009 Regular Session of the Kentucky General Assembly, regardless of whether this Act is enacted before or after those other Acts.

(2) Notwithstanding KRS 446.100 or 446.260 or any other statute to the contrary, the reviser of statutes shall give force and effect to other 2009 Acts that amend one or more sections contained in this Act, and shall codify those amendments in accordance with KRS 446.250 and other applicable rules of codification.

**Signed by the Governor March 17, 2009.**

## CHAPTER 14

### (SB 183)

AN ACT relating to reorganization.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
4. Department of Law.
  - (a) Attorney General.
5. Department of the Treasury.
  - (a) Treasurer.
6. Department of Agriculture.
  - (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
7. Auditor of Public Accounts.

II. Program cabinets headed by appointed officers:

1. Justice and Public Safety Cabinet:
  - (a) Department of Kentucky State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Office of Drug Control Policy.
  - (g) Office of Legal Services.
  - (h) Office of the Kentucky State Medical Examiner.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Office of Legislative and Intergovernmental Services.
  - (l) Office of Management and Administrative Services.
  - (m) Office of Public Safety Training.
  - (n) Office of Investigations.
  - (o) Department of Kentucky Vehicle Enforcement.
  - (p) Department for Public Advocacy.
2. Education Cabinet:
  - (a) Office of the Secretary.
  - (b) Office of Legal Services.
    1. Client Assistance Program.
  - (c) Office of Communication.
  - (d) Office of Legislative and Intergovernmental Affairs.
  - (e) Office of Budget and Administration.
    1. Division of Human Resources.
    2. Division of Administrative Services.
    3. Division of Technology Services.
  - (f) Board of Directors for the Center for School Safety.
  - (g) Council on Postsecondary Education.
    1. Foundation for Adult Education.
  - (h) Department of Education.
    1. Kentucky Board of Education.
  - (i) Department for Libraries and Archives.
  - (j) Department of Workforce Investment.
    1. Office for the Blind.
    2. Office of Vocational Rehabilitation.
    3. Office of Career and Technical Education.
    4. Office of Employment and Training.

- (k) Foundation for Workforce Development.
  - (l) Kentucky Office for the Blind State Rehabilitation Council.
  - (m) Kentucky Technical Education Personnel Board.
  - (n) Kentucky Workforce Investment Board.
  - (o) Statewide Council for Vocational Rehabilitation.
  - (p) Statewide Independent Living Council.
  - (q) Unemployment Insurance Commission.
  - (r) Education Professional Standards Board.
    - 1. Division of Educator Preparation.
    - 2. Division of Certification.
    - 3. Division of Professional Learning and Assessment.
    - 4. Division of Legal Services.
  - (s) Kentucky Commission on the Deaf and Hard of Hearing.
  - (t) Kentucky Educational Television.
  - (u) Kentucky Environmental Education Council.
3. Environmental and Public Protection Cabinet:
- (a) Office of the Secretary.
    - 1. Office of Legislative and Intergovernmental Affairs.
    - 2. Office of Communications and Public Outreach.
    - 3. Office of Regulatory Affairs.
    - 4. Office of Legal Services.
    - 5. Office of Administrative and Information Services.
    - 6. Office of Administrative Hearings.
    - 7. Office of Inspector General.
    - 8. Mine Safety Review Commission.
    - 9. Workers' Compensation Board.
    - 10. Kentucky State Nature Preserves Commission.
    - 11. Kentucky Environmental Quality Commission.
    - 12. Kentucky Occupational Safety and Health Review Commission.
  - (b) Department for Environmental Protection.
    - 1. Office of the Commissioner.
    - 2. Division of Air Quality.
    - 3. Division of Water.
    - 4. Division of Environmental Services.
    - 5. Division of Waste Management.
    - 6. Division of Enforcement.
    - 7. Division of Compliance Assistance.
  - (c) Department for Natural Resources.

1. Office of the Commissioner.
  2. Office of Technical and Administrative Support.
  3. Division of Mine Permits.
  4. Division of Mine Reclamation and Enforcement.
  5. Division of Abandoned Mine Lands.
  6. Division of Oil and Gas Conservation.
  7. Office of Mine Safety and Licensing.
  8. Division of Forestry.
  9. Division of Conservation.
- (d) Department of Public Protection.
1. Office of the Commissioner.
  2. Division of Administrative Services.
  3. Crime Victims Compensation Board.
  4. Board of Claims.
  5. Board of Tax Appeals.
  6. Kentucky Boxing and Wrestling Authority.
  7. Kentucky Horse Racing Authority.
  8. Kentucky Public Service Commission.
  9. Office of Alcoholic Beverage Control.
  10. Office of Charitable Gaming.
  11. Office of Financial Institutions.
  12. Office of Housing, Buildings and Construction.
  13. Office of Insurance.
- (e) Department of Labor.
1. Office of the Commissioner.
  2. Office of Occupational Safety and Health.
  3. Office of Labor Management Relations and Mediation.
  4. Office of Workplace Standards.
  5. Office of Workers' Claims.
  6. Workers' Compensation Funding Commission.
  7. Kentucky Labor Management Advisory Council.
  8. Occupational Safety and Health Standards Board.
  9. Prevailing Wage Review Board.
  10. Kentucky Employees Insurance Association.
  11. Apprenticeship and Training Council.
  12. State Labor Relations Board.
  13. Workers' Compensation Advisory Council.
  14. Workers' Compensation Nominating Commission.

15. Employers' Mutual Insurance Authority.
  16. Division of Administrative Services.
4. Transportation Cabinet:
- (a) Department of Highways.
    1. Office of Program Planning and Management.
    2. Office of Project Development.
    3. Office of Construction and Operations.
    4. Office of Intermodal Programs.
    5. Highway District Offices One through Twelve.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Aviation.
  - (e) Department of Intergovernmental Programs.
    1. Office of Transportation Enhancement Programs.
    2. Office of Rural and Secondary Roads.
  - (f) Office of the Secretary.
    1. Office of Legislative and Intergovernmental Affairs.
    2. Office of Public Affairs.
    3. Office of Transportation Delivery.
    4. Office for Business and Occupational Development.
    5. Office of Budget and Fiscal Management.
    6. Office of Legal Services.
    7. Office of Inspector General.
    8. Office of the Transportation Operations Center.
    9. Office of Personnel Management.
5. Cabinet for Economic Development:
- (a) Office of Administration and Support.
  - (b) Department for New Business Development.
  - (c) Department of Financial Incentives.
  - (d) Department for Existing Business Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
  - (g) Office of Research and Information Technology.
  - (h) Department of Commercialization and Innovation.
  - (i) Office of Legal Services.
  - (j) Commission on Small Business Advocacy.
6. Cabinet for Health and Family Services:
- (a) Department for Public Health.

- (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission for Children with Special Health Care Needs.
  - (e) Office of Health Policy.
  - (f) Office of the Secretary.
  - (g) Office of Legal Services.
  - (h) Office of Inspector General.
  - (i) Office of Legislative and Public Affairs.
  - (j) Department for Community Based Services.
  - (k) Department for Disability Determination Services.
  - (l) Office of the Ombudsman.
  - (m) Department for Human Support Services.
  - (n) Kentucky Commission on Community Volunteerism and Service.
  - (o) Office of Fiscal Services.
  - (p) Office of Human Resource Management.
  - (q) Office of Technology.
  - (r) Office of Contract Oversight.
  - (s) Governor's Office of Wellness and Physical Activity.
  - (t) Department for Aging and Independent Living.
7. Finance and Administration Cabinet:
- (a) Office of General Counsel.
  - (b) Office of the Controller.
  - (c) Office of Administrative Services.
  - (d) Office of Public Information.
  - (e) Department for Facilities and Support Services.
  - (f) Department of Revenue.
  - (g) Commonwealth Office of Technology.
  - (h) State Property and Buildings Commission.
  - (i) Kentucky Savings Bond Authority.
  - (j) Office of Equal Employment Opportunity and Contract Compliance.
  - (k) Kentucky Employees Retirement Systems.
  - (l) Commonwealth Credit Union.
  - (m) State Investment Commission.
  - (n) Kentucky Housing Corporation.
  - (o) Kentucky Local Correctional Facilities Construction Authority.
  - (p) Kentucky Turnpike Authority.
  - (q) Historic Properties Advisory Commission.
  - (r) Kentucky Tobacco Settlement Trust Corporation.

- (s) State Board for Proprietary Education.
  - (t) Kentucky Higher Education Assistance Authority.
  - (u) Kentucky River Authority.
  - (v) Kentucky Teachers' Retirement System Board of Trustees.
8. ***Tourism, Arts and Heritage***~~[Commerce]~~ Cabinet:
- (a) Department of Tourism.
    - (1) Division of Tourism Services.
    - (2) Division of Marketing and Advertising.
    - (3) Division of Parks Marketing.
  - (b) Kentucky Department of Parks.
    - (1) Division of Information Technology.
    - (2) Division of Personnel and Payroll.
    - (3) Division of Financial Operations.
    - (4) Division of Facilities Management.
    - (5) Division of Facilities Maintenance.
    - (6) Division of Customer Services.
    - (7) Division of Recreation.
    - (8) Division of Golf Courses.
    - (9) Division of Food Services.
    - (10) Division of Rangers.
    - (11) Division of Eastern Parks.
    - (12) Division of Southern Parks.
    - (13) Division of Western Parks.
  - (c) Department of Fish and Wildlife Resources.
    - (1) Division of Law Enforcement.
    - (2) Division of Administrative Services.
    - (3) Division of Engineering.
    - (4) Division of Fisheries.
    - (5) Division of Information and Education.
    - (6) Division of Wildlife.
    - (7) Division of Public Affairs.
  - (d) Kentucky Horse Park.
    - (1) Division of Support Services.
    - (2) Division of Buildings and Grounds.
    - (3) Division of Operational Services.
  - (e) Kentucky State Fair Board.
    - (1) ***Office of Administrative and Information Technology Services.***
    - (2) ***Office of Human Resources and Access Control.***

- (3) Division of Expositions~~[and Admission]~~.
- (4)~~(2)~~ Division of Kentucky~~[Fair and]~~ Exposition Center Operations.
- (5)~~(3)~~ Division of **Kentucky International**~~[Commonwealth]~~ Convention Center.
- (6)~~(4)~~ Division of Public Relations and Media.
- (7)~~(5)~~ Division of **Venue**~~[Administrative]~~ Services.
- (8)~~(6)~~ Division of Personnel Management and Staff Development.
- (9)~~(7)~~ Division of Sales.
- (10)~~(8)~~ Division of Security and Traffic Control.
- (11) **Division of Information Technology.**
- (12) **Division of the Louisville Arena.**
- (13) **Division of Fiscal and Contract Management.**
- (14) **Division of Access Control.**
- (f) Office of the Secretary.
- (g) Office of Finance and Administration.
- (h) Office of Legal Affairs.
- (i) Office of Intergovernmental Affairs.
- (j) Office of Human Resources.
- (k) Office of Public Affairs and Constituent Services.
- (l) Office of Information Technology.
- (m) Office of the Kentucky Sports Authority.
  - (1) Kentucky Sports Authority Board.
- (n) Office of Creative Services.
- (o) Office of Capital Plaza Operations.
- (p) Office of Arts and Cultural Heritage.
- (q) Kentucky African-American Heritage Commission.
- (r) Kentucky Foundation for the Arts.
- (s) Kentucky Humanities Council.
- (t) Kentucky Heritage Council.
- (u) Kentucky Arts Council.
- (v) Kentucky Historical Society.
  - (1) Division of Museums.
  - (2) Division of Oral History and Educational Outreach.
  - (3) Division of Research and Publications.
  - (4) Division of Administration.
- (w) Kentucky Center for the Arts.
  - (1) Division of Governor's School for the Arts.
- (x) Kentucky Artisans Center at Berea.
- (y) Martin Luther King Commission.

- (z) Northern Kentucky Convention Center.
  - (aa) Eastern Kentucky Exposition Center.
  - 9. Personnel Cabinet:
    - (a) Office of the Secretary.
    - (b) Department for Personnel Administration.
    - (c) Office for Employee Relations.
    - (d) Kentucky Public Employees Deferred Compensation Authority.
    - (e) Office of Administrative Services.
    - (f) Office of Legal Services.
    - (g) Office of Government Training.
    - (h) Department for Employee Insurance.
  - III. Other departments headed by appointed officers:
    - 1. Department of Military Affairs.
    - 2. Governor's Office for Local Development.
    - 3. Kentucky Commission on Human Rights.
    - 4. Kentucky Commission on Women.
    - 5. Department of Veterans' Affairs.
    - 6. Kentucky Commission on Military Affairs.
    - 7. Office of Minority Empowerment.
    - 8. Governor's Council on Wellness and Physical Activity.
- ➔Section 2. KRS 247.226 is amended to read as follows:
- (1) There is created the North American International Livestock Exposition Executive Committee which shall be attached for administrative purposes to the North American International Livestock Exposition ***Branch within the Division of Expositions*** within the State Fair Board. The membership of the committee shall consist of eleven (11) members as follows: two (2) members at-large appointed by the Governor; the chairman of the State Fair Board; the Commissioner of the Department of Agriculture; the dean of the University of Kentucky School of Agriculture; and the chairpersons of the six (6) advisory subcommittees of the committee. The committee shall elect one (1) of its members to serve as chairperson. The terms of the members appointed by the Governor shall be concurrent with that of the Governor. The terms of the other members shall be concurrent with their respective, representative positions. The committee members shall receive no salary but shall be reimbursed for their expenses incurred in the performance of their duties in accordance with state regulations and such expenses shall be paid from agency receipts.
- ➔Section 3. Any provision of law to the contrary notwithstanding, the General Assembly confirms the Governor's Executive Order 2008-1292 relating to the Kentucky State Fair Board, to the extent not otherwise confirmed or superseded by this Act.

**Signed by the Governor March 17, 2009.**

## CHAPTER 15

### (SB 184)

AN ACT relating to reorganization.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
4. Department of Law.
  - (a) Attorney General.
5. Department of the Treasury.
  - (a) Treasurer.
6. Department of Agriculture.
  - (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
7. Auditor of Public Accounts.

II. Program cabinets headed by appointed officers:

1. Justice and Public Safety Cabinet:
  - (a) Department of Kentucky State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.
  - (f) Office of Drug Control Policy.
  - (g) Office of Legal Services.
  - (h) Office of the Kentucky State Medical Examiner.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Office of Legislative and Intergovernmental Services.
  - (l) Office of Management and Administrative Services.
  - (m) ~~Office of Public Safety Training~~
  - (n) Office of Investigations.

- (n)~~(o)~~ Department of Kentucky Vehicle Enforcement.
- (o)~~(p)~~ Department for Public Advocacy.
- 2. Education Cabinet:
  - (a) Office of the Secretary.
  - (b) Office of Legal Services.
    - 1. Client Assistance Program.
  - (c) Office of Communication.
  - (d) Office of Legislative and Intergovernmental Affairs.
  - (e) Office of Budget and Administration.
    - 1. Division of Human Resources.
    - 2. Division of Administrative Services.
    - 3. Division of Technology Services.
  - (f) Board of Directors for the Center for School Safety.
  - (g) Council on Postsecondary Education.
    - 1. Foundation for Adult Education.
  - (h) Department of Education.
    - 1. Kentucky Board of Education.
  - (i) Department for Libraries and Archives.
  - (j) Department of Workforce Investment.
    - 1. Office for the Blind.
    - 2. Office of Vocational Rehabilitation.
    - 3. Office of Career and Technical Education.
    - 4. Office of Employment and Training.
  - (k) Foundation for Workforce Development.
  - (l) Kentucky Office for the Blind State Rehabilitation Council.
  - (m) Kentucky Technical Education Personnel Board.
  - (n) Kentucky Workforce Investment Board.
  - (o) Statewide Council for Vocational Rehabilitation.
  - (p) Statewide Independent Living Council.
  - (q) Unemployment Insurance Commission.
  - (r) Education Professional Standards Board.
    - 1. Division of Educator Preparation.
    - 2. Division of Certification.
    - 3. Division of Professional Learning and Assessment.
    - 4. Division of Legal Services.
  - (s) Kentucky Commission on the Deaf and Hard of Hearing.
  - (t) Kentucky Educational Television.
  - (u) Kentucky Environmental Education Council.

3. Environmental and Public Protection Cabinet:
  - (a) Office of the Secretary.
    1. Office of Legislative and Intergovernmental Affairs.
    2. Office of Communications and Public Outreach.
    3. Office of Regulatory Affairs.
    4. Office of Legal Services.
    5. Office of Administrative and Information Services.
    6. Office of Administrative Hearings.
    7. Office of Inspector General.
    8. Mine Safety Review Commission.
    9. Workers' Compensation Board.
    10. Kentucky State Nature Preserves Commission.
    11. Kentucky Environmental Quality Commission.
    12. Kentucky Occupational Safety and Health Review Commission.
  - (b) Department for Environmental Protection.
    1. Office of the Commissioner.
    2. Division of Air Quality.
    3. Division of Water.
    4. Division of Environmental Services.
    5. Division of Waste Management.
    6. Division of Enforcement.
    7. Division of Compliance Assistance.
  - (c) Department for Natural Resources.
    1. Office of the Commissioner.
    2. Office of Technical and Administrative Support.
    3. Division of Mine Permits.
    4. Division of Mine Reclamation and Enforcement.
    5. Division of Abandoned Mine Lands.
    6. Division of Oil and Gas Conservation.
    7. Office of Mine Safety and Licensing.
    8. Division of Forestry.
    9. Division of Conservation.
  - (d) Department of Public Protection.
    1. Office of the Commissioner.
    2. Division of Administrative Services.
    3. Crime Victims Compensation Board.
    4. Board of Claims.
    5. Board of Tax Appeals.

6. Kentucky Boxing and Wrestling Authority.
7. Kentucky Horse Racing Authority.
8. Kentucky Public Service Commission.
9. Office of Alcoholic Beverage Control.
10. Office of Charitable Gaming.
11. Office of Financial Institutions.
12. Office of Housing, Buildings and Construction.
13. Office of Insurance.
- (e) Department of Labor.
  1. Office of the Commissioner.
  2. Office of Occupational Safety and Health.
  3. Office of Labor Management Relations and Mediation.
  4. Office of Workplace Standards.
  5. Office of Workers' Claims.
  6. Workers' Compensation Funding Commission.
  7. Kentucky Labor Management Advisory Council.
  8. Occupational Safety and Health Standards Board.
  9. Prevailing Wage Review Board.
  10. Kentucky Employees Insurance Association.
  11. Apprenticeship and Training Council.
  12. State Labor Relations Board.
  13. Workers' Compensation Advisory Council.
  14. Workers' Compensation Nominating Commission.
  15. Employers' Mutual Insurance Authority.
  16. Division of Administrative Services.
4. Transportation Cabinet:
  - (a) Department of Highways.
    1. Office of Program Planning and Management.
    2. Office of Project Development.
    3. Office of Construction and Operations.
    4. Office of Intermodal Programs.
    5. Highway District Offices One through Twelve.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Aviation.
  - (e) Department of Intergovernmental Programs.
    1. Office of Transportation Enhancement Programs.
    2. Office of Rural and Secondary Roads.

- (f) Office of the Secretary.
  - 1. Office of Legislative and Intergovernmental Affairs.
  - 2. Office of Public Affairs.
  - 3. Office of Transportation Delivery.
  - 4. Office for Business and Occupational Development.
  - 5. Office of Budget and Fiscal Management.
  - 6. Office of Legal Services.
  - 7. Office of Inspector General.
  - 8. Office of the Transportation Operations Center.
  - 9. Office of Personnel Management.
- 5. Cabinet for Economic Development:
  - (a) Office of Administration and Support.
  - (b) Department for New Business Development.
  - (c) Department of Financial Incentives.
  - (d) Department for Existing Business Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
  - (g) Office of Research and Information Technology.
  - (h) Department of Commercialization and Innovation.
  - (i) Office of Legal Services.
  - (j) Commission on Small Business Advocacy.
- 6. Cabinet for Health and Family Services:
  - (a) Department for Public Health.
  - (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission for Children with Special Health Care Needs.
  - (e) Office of Health Policy.
  - (f) Office of the Secretary.
  - (g) Office of Legal Services.
  - (h) Office of Inspector General.
  - (i) Office of Legislative and Public Affairs.
  - (j) Department for Community Based Services.
  - (k) Department for Disability Determination Services.
  - (l) Office of the Ombudsman.
  - (m) Department for Human Support Services.
  - (n) Kentucky Commission on Community Volunteerism and Service.
  - (o) Office of Fiscal Services.
  - (p) Office of Human Resource Management.

- (q) Office of Technology.
  - (r) Office of Contract Oversight.
  - (s) Governor's Office of Wellness and Physical Activity.
  - (t) Department for Aging and Independent Living.
7. Finance and Administration Cabinet:
- (a) Office of General Counsel.
  - (b) Office of the Controller.
  - (c) Office of Administrative Services.
  - (d) Office of Public Information.
  - (e) Department for Facilities and Support Services.
  - (f) Department of Revenue.
  - (g) Commonwealth Office of Technology.
  - (h) State Property and Buildings Commission.
  - (i) Kentucky Savings Bond Authority.
  - (j) Office of Equal Employment Opportunity and Contract Compliance.
  - (k) Kentucky Employees Retirement Systems.
  - (l) Commonwealth Credit Union.
  - (m) State Investment Commission.
  - (n) Kentucky Housing Corporation.
  - (o) Kentucky Local Correctional Facilities Construction Authority.
  - (p) Kentucky Turnpike Authority.
  - (q) Historic Properties Advisory Commission.
  - (r) Kentucky Tobacco Settlement Trust Corporation.
  - (s) State Board for Proprietary Education.
  - (t) Kentucky Higher Education Assistance Authority.
  - (u) Kentucky River Authority.
  - (v) Kentucky Teachers' Retirement System Board of Trustees.
8. Commerce Cabinet:
- (a) Department of Tourism.
    - (1) Division of Tourism Services.
    - (2) Division of Marketing and Advertising.
    - (3) Division of Parks Marketing.
  - (b) Kentucky Department of Parks.
    - (1) Division of Information Technology.
    - (2) Division of Personnel and Payroll.
    - (3) Division of Financial Operations.
    - (4) Division of Facilities Management.
    - (5) Division of Facilities Maintenance.

- (6) Division of Customer Services.
- (7) Division of Recreation.
- (8) Division of Golf Courses.
- (9) Division of Food Services.
- (10) Division of Rangers.
- (11) Division of Eastern Parks.
- (12) Division of Southern Parks.
- (13) Division of Western Parks.
- (c) Department of Fish and Wildlife Resources.
  - (1) Division of Law Enforcement.
  - (2) Division of Administrative Services.
  - (3) Division of Engineering.
  - (4) Division of Fisheries.
  - (5) Division of Information and Education.
  - (6) Division of Wildlife.
  - (7) Division of Public Affairs.
- (d) Kentucky Horse Park.
  - (1) Division of Support Services.
  - (2) Division of Buildings and Grounds.
  - (3) Division of Operational Services.
- (e) Kentucky State Fair Board.
  - (1) Division of Expositions and Admission.
  - (2) Division of Kentucky Fair and Exposition Center Operations.
  - (3) Division of Commonwealth Convention Center.
  - (4) Division of Public Relations and Media.
  - (5) Division of Administrative Services.
  - (6) Division of Personnel Management and Staff Development.
  - (7) Division of Sales.
  - (8) Division of Security and Traffic Control.
- (f) Office of the Secretary.
- (g) Office of Finance and Administration.
- (h) Office of Legal Affairs.
- (i) Office of Intergovernmental Affairs.
- (j) Office of Human Resources.
- (k) Office of Public Affairs and Constituent Services.
- (l) Office of Information Technology.
- (m) Office of the Kentucky Sports Authority.
  - (1) Kentucky Sports Authority Board.

- (n) Office of Creative Services.
  - (o) Office of Capital Plaza Operations.
  - (p) Office of Arts and Cultural Heritage.
  - (q) Kentucky African-American Heritage Commission.
  - (r) Kentucky Foundation for the Arts.
  - (s) Kentucky Humanities Council.
  - (t) Kentucky Heritage Council.
  - (u) Kentucky Arts Council.
  - (v) Kentucky Historical Society.
    - (1) Division of Museums.
    - (2) Division of Oral History and Educational Outreach.
    - (3) Division of Research and Publications.
    - (4) Division of Administration.
  - (w) Kentucky Center for the Arts.
    - (1) Division of Governor's School for the Arts.
  - (x) Kentucky Artisans Center at Berea.
  - (y) Martin Luther King Commission.
  - (z) Northern Kentucky Convention Center.
  - (aa) Eastern Kentucky Exposition Center.
9. Personnel Cabinet:
- (a) Office of the Secretary.
  - (b) Department for Personnel Administration.
  - (c) Office for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Office of Administrative Services.
  - (f) Office of Legal Services.
  - (g) Office of Government Training.
  - (h) Department for Employee Insurance.
- III. Other departments headed by appointed officers:
- 1. Department of Military Affairs.
  - 2. Governor's Office for Local Development.
  - 3. Kentucky Commission on Human Rights.
  - 4. Kentucky Commission on Women.
  - 5. Department of Veterans' Affairs.
  - 6. Kentucky Commission on Military Affairs.
  - 7. Office of Minority Empowerment.
  - 8. Governor's Council on Wellness and Physical Activity.

➔Section 2. KRS 15A.020 is amended to read as follows:

- (1) The Justice and Public Safety Cabinet shall have the following departments:
- (a) Department of Corrections;
  - (b) Department of Criminal Justice Training, which shall have the following divisions:
    1. Training Operations Division;
    2. Administrative Division; and
    3. Training Support Division;
  - (c) Department of Juvenile Justice, which shall have the following divisions:
    1. Division of Medical Services;
    2. Division of Western Region;
    3. Division of Central Region;
    4. Division of Eastern Region;
    5. Division of Southeastern Region;
    6. ~~Division of Northern Region;~~
    7. ~~Division of Administrative Services;~~
    7. ~~8.~~ ~~Division of Program Services;~~
    8. ~~9.~~ ~~Division of Placement Services;~~
    9. ~~10.~~ **Division of Professional Development** ~~Division~~; **and**
    10. ~~11.~~ **Division of Community and Mental Health Services** ~~Division; and~~
    12. ~~Community Services Division~~;
  - (d) Department of Kentucky Vehicle Enforcement, headed by a commissioner appointed pursuant to KRS 12.040, which shall perform functions required by KRS Chapter 281 and other state and federal laws and administrative regulations relating to commercial vehicles and vehicles for hire and which shall perform such other functions as may be assigned by the secretary. The Department of Kentucky Vehicle Enforcement shall have the following divisions:
    1. Division of Field Operations East;
    2. Division of Field Operations West;
    3. Division of Special Operations; and
    4. Division of Administrative Services;
  - (e) Department of Kentucky State Police, which shall have the following divisions:
    1. Administrative Division;
    2. Operations Division; and
    3. Technical Services Division; and
  - (f) Department for Public Advocacy, which shall have the following divisions:
    1. Protection and Advocacy Division;
    2. Division of Law Operations;
    3. Division of Trial Services; and
    4. Division of Post-Trial Services.
- (2) Each department, except for the Department for Public Advocacy, shall be headed by a commissioner who shall be appointed by the secretary of justice and public safety with the approval of the Governor as required by KRS 12.040. Each commissioner shall be directly responsible to the secretary and shall have such functions,

powers, and duties as provided by law and as the secretary may prescribe. The Department for Public Advocacy shall be headed by the public advocate, appointed as required by KRS 31.020, who shall be directly responsible to the Public Advocacy Commission. The Department for Public Advocacy is an independent state agency which shall be attached to the Justice and Public Safety Cabinet for administrative purposes only. The Justice and Public Safety Cabinet shall not have control over the Department for Public Advocacy's information technology equipment and use unless granted access by court order.

- (3) The Justice and Public Safety Cabinet shall have the following offices:
- (a) Office of the Secretary, which shall be headed by a deputy secretary appointed pursuant to KRS 12.050 and responsible for the direct administrative support for the secretary and other duties as assigned by the secretary, and which, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;
  - (b) Office of Management and Administrative Services, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible to and report to the secretary and be responsible for all matters relating to human resources, state and federal grants management, including but not limited to the administration of KRS 15A.060, fiscal functions, management and daily operations of the information processing activities for the cabinet, and management and daily administrative services for the cabinet; and who, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;
  - (c) Office of Legal Services, which shall be headed by an executive director appointed pursuant to KRS 12.050 and 12.210 to provide legal representation and services for the cabinet. The executive director shall be directly responsible to and report to the secretary and, with the approval of the secretary, may employ such attorneys appointed pursuant to KRS 12.210 and other staff as necessary to perform the duties, functions, and responsibilities of the office;
  - (d) Office of Legislative and Intergovernmental Services, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible for all matters relating to the provision of support to the Criminal Justice Council, legislative liaison services, and functions and duties vested in the Criminal Justice Council as described in KRS 15A.030. The executive director shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;
  - (e) Office of the Kentucky State Medical Examiner, which shall be headed by a chief medical examiner appointed pursuant to KRS 72.240 who shall be responsible for all matters relating to forensic pathology and forensic toxicology and other duties as assigned by the secretary. The executive director appointed pursuant to KRS 12.050 shall be responsible for all matters related to the administrative support of the Office of the State Medical Examiner. The executive director shall report directly to the secretary and with the approval of the secretary may employ such administrative support staff as necessary to perform the administrative duties, functions, and responsibilities of the office. The chief medical examiner shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the forensic duties, functions, and responsibilities of the office;
  - (f) Office of Drug Control Policy, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible for all matters relating to the research, coordination, and execution of drug control policy and for the management of state and federal grants, including but not limited to the prevention and treatment related to substance abuse. By December 31 of each year, the Office of Drug Control Policy shall review, approve, and coordinate all current projects of any substance abuse program which is conducted by or receives funding through agencies of the executive branch. This oversight shall extend to all substance abuse programs which are principally related to the prevention or treatment, or otherwise targeted at the reduction, of substance abuse in the Commonwealth. The Office of Drug Control Policy shall promulgate administrative regulations consistent with enforcing this oversight authority. The executive director shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the duties, functions, and responsibilities of the office; *and*
  - ~~(g) Office of Public Safety Training, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible for all matters relating to the construction and operation of joint usage training facilities at the Public Safety Training Center for the cabinet. The Department of Criminal Justice Training shall provide all administrative and logistical support for this office. The~~

~~executive director shall be responsible to and report to the secretary for all matters relating to the construction and operation of joint usage training facilities at the Public Safety Training Center, and management, scheduling, maintenance, and daily operations of the Public Safety Training Center. The executive director, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office; and~~

- (h)} Office of Investigations, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible for investigating all complaints regarding the facilities, staff, treatment of juveniles, and other matters relating to the operation of the Justice and Public Safety Cabinet. If it appears that there is a violation of statutes, administrative regulations, policies, court decisions, the rights of juveniles who are subject to the orders of the department, or any other matter relating to the Justice and Public Safety Cabinet, the office shall report to the secretary of the Justice and Public Safety Cabinet who shall, if required, refer the matter to a law enforcement agency, Commonwealth's attorney, county attorney, the Attorney General, or federal agencies, as appropriate. The executive director shall be directly responsible to and report to the secretary and, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office. The Office of Investigations may be used to investigate matters in which there is a suspicion of violation of written policy, administrative regulation, or statutory law within the Department for Public Advocacy only when such investigation will have no prejudicial impact upon a person who has an existing attorney-client relationship with the Department for Public Advocacy. Notwithstanding the provisions of this paragraph, investigation and discipline of KRS Chapter 16 personnel shall continue to be conducted by the Department of Kentucky State Police pursuant to KRS Chapter 16. The Office of Investigations shall conduct no other investigations.

➔Section 3. The General Assembly confirms Executive Order 2008-505, dated June 6, 2008, to the extent it is not otherwise confirmed or superseded by this Act.

**Signed by the Governor March 17, 2009.**

## CHAPTER 16

(SB 185)

AN ACT relating to reorganization.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 11.065 is amended to read as follows:

- (1) The secretaries of the Justice and Public Safety Cabinet, the Education Cabinet, the Environmental and Public Protection Cabinet, the Transportation Cabinet, the Cabinet for Economic Development, the Cabinet for Health and Family Services, the Finance and Administration Cabinet, the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet, the Personnel Cabinet, the Governor's Executive Cabinet, the state budget director, the Governor's chief of staff, and the Lieutenant Governor shall constitute the Governor's Executive Cabinet. There shall be a vice chairman appointed by the Governor who shall serve in an advisory capacity to the Executive Cabinet. The Governor shall be the chairman, and the secretary of the Finance and Administration Cabinet shall be a second vice chairman of the Executive Cabinet. The Governor may designate others to serve as vice chairman.
- (2) The cabinet shall meet not less than once every two (2) months and at other times on call of the Governor. The Executive Cabinet shall be a part of the Office of the Governor and shall not constitute a separate department or agency of the state. Members of the cabinet shall be the major assistants to the Governor in the administration of the state government and shall assist the Governor in the proper operation of his office and perform other duties the Governor may require of them.
- (3) The cabinet shall consider matters involving policies and procedures the Governor or any member may place before it. The cabinet shall advise and consult with the Governor on all matters affecting the welfare of the state.

➔Section 2. KRS 11.515 is amended to read as follows:

- (1) There is hereby established a Geographic Information Advisory Council to advise the executive director of the Commonwealth Office of Technology on issues relating to geographic information and geographic information systems.
- (2) The council shall establish and adopt policies and procedures that assist state and local jurisdictions in developing, deploying, and leveraging geographic information resources and geographic information systems technology for the purpose of improving public administration.
- (3) The council shall closely coordinate with users of geographic information systems to establish policies and procedures that insure the maximum use of geographic information by minimizing the redundancy of geographic information and geographic information resources.
- (4) The Geographic Information Advisory Council shall consist of twenty-four (24) members and one (1) legislative liaison. The members shall be knowledgeable in the use and application of geographic information systems technology and shall have sufficient authority within their organizations to influence the implementation of council recommendations.
  - (a) The council shall consist of:
    1. The secretary of the Transportation Cabinet or his designee;
    2. The secretary of the Cabinet for Health and Family Services or his or her designee;
    3. The director of the Kentucky Geological Survey or his designee;
    4. The secretary of the Finance and Administration Cabinet or his designee;
    5. The executive director of the Commonwealth Office of Technology or her or his designee;
    6. The secretary of the Economic Development Cabinet or his designee;
    7. The commissioner of the Governor's Office for Local Development or his designee;
    8. The secretary of the Justice and Public Safety Cabinet or his designee;
    9. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council on Postsecondary Education;
    10. The adjutant general of the Department of Military Affairs or his designee;
    11. The commissioner of the Department of Education or his designee;
    12. The secretary of the Environmental and Public Protection Cabinet or his designee;
    13. The Commissioner of the Department of Agriculture or his designee;
    14. The secretary of the *Tourism, Arts and Heritage*~~Commerce~~ Cabinet or his designee;
    15. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky League of Cities;
    16. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky Association of Counties;
    17. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chapter of the American Planning Association;
    18. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chamber of Commerce;
    19. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Association of Land Surveyors;
    20. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Society of Professional Engineers;
    21. One (1) member appointed by the Governor from a list of three (3) persons submitted by the chairman of the Kentucky Board of Registered Geologists; and
    22. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council of Area Development Districts.

- (b) The council shall have one (1) nonvoting legislative liaison, to be appointed by the Legislative Research Commission.
- (5) The chair shall be appointed by the Governor. The council may have committees and subcommittees as determined by the council or an executive committee, if an executive committee exists.
- (6) A member of the council shall not:
  - (a) Be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that have, a substantial interest in the geographic information industry and is doing business in the Commonwealth;
  - (b) Own, control, or have, directly or indirectly, more than ten percent (10%) interest in a business entity that has a substantial interest in the geographic information industry;
  - (c) Be in any manner connected with any contract or bid for furnishing any governmental body of the Commonwealth with geographic information systems, the computers on which they are automated, or a service related to geographic information systems;
  - (d) Be a person required to register as a lobbyist because of activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, substantial interest in the geographic information industry;
  - (e) Accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise; or
  - (f) Be liable to civil action or any action performed in good faith in the performance of duties as a council member.
- (7) Those council members specified in subsection (4)(a) of this section who serve by virtue of an office shall serve on the council while they hold that office.
- (8) Appointed members of the council shall serve for a term of four (4) years. Vacancies in the membership of the council shall be filled in the same manner as the original appointments. If a nominating organization changes its name, its successor organization having the same responsibilities and purposes shall be the nominating organization.
- (9) The council shall have no funds of its own, and council members shall not receive compensation of any kind from the council.
- (10) A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at council meetings.

➔Section 3. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

- 1. The Governor.
- 2. Lieutenant Governor.
- 3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.

- (c) Registry of Election Finance.
  - 4. Department of Law.
    - (a) Attorney General.
  - 5. Department of the Treasury.
    - (a) Treasurer.
  - 6. Department of Agriculture.
    - (a) Commissioner of Agriculture.
    - (b) Kentucky Council on Agriculture.
  - 7. Auditor of Public Accounts.
- II. Program cabinets headed by appointed officers:
- 1. Justice and Public Safety Cabinet:
    - (a) Department of Kentucky State Police.
    - (b) Department of Criminal Justice Training.
    - (c) Department of Corrections.
    - (d) Department of Juvenile Justice.
    - (e) Office of the Secretary.
    - (f) Office of Drug Control Policy.
    - (g) Office of Legal Services.
    - (h) Office of the Kentucky State Medical Examiner.
    - (i) Parole Board.
    - (j) Kentucky State Corrections Commission.
    - (k) Office of Legislative and Intergovernmental Services.
    - (l) Office of Management and Administrative Services.
    - (m) Office of Public Safety Training.
    - (n) Office of Investigations.
    - (o) Department of Kentucky Vehicle Enforcement.
    - (p) Department for Public Advocacy.
  - 2. Education Cabinet:
    - (a) Office of the Secretary.
    - (b) Office of Legal Services.
      - 1. Client Assistance Program.
    - (c) Office of Communication.
    - (d) Office of Legislative and Intergovernmental Affairs.
    - (e) Office of Budget and Administration.
      - 1. Division of Human Resources.
      - 2. Division of Administrative Services.
      - 3. Division of Technology Services.
    - (f) Board of Directors for the Center for School Safety.

- (g) Council on Postsecondary Education.
    - 1. Foundation for Adult Education.
  - (h) Department of Education.
    - 1. Kentucky Board of Education.
  - (i) Department for Libraries and Archives.
  - (j) Department of Workforce Investment.
    - 1. Office for the Blind.
    - 2. Office of Vocational Rehabilitation.
    - 3. Office of Career and Technical Education.
    - 4. Office of Employment and Training.
  - (k) Foundation for Workforce Development.
  - (l) Kentucky Office for the Blind State Rehabilitation Council.
  - (m) Kentucky Technical Education Personnel Board.
  - (n) Kentucky Workforce Investment Board.
  - (o) Statewide Council for Vocational Rehabilitation.
  - (p) Statewide Independent Living Council.
  - (q) Unemployment Insurance Commission.
  - (r) Education Professional Standards Board.
    - 1. Division of Educator Preparation.
    - 2. Division of Certification.
    - 3. Division of Professional Learning and Assessment.
    - 4. Division of Legal Services.
  - (s) Kentucky Commission on the Deaf and Hard of Hearing.
  - (t) Kentucky Educational Television.
  - (u) Kentucky Environmental Education Council.
3. Environmental and Public Protection Cabinet:
- (a) Office of the Secretary.
    - 1. Office of Legislative and Intergovernmental Affairs.
    - 2. Office of Communications and Public Outreach.
    - 3. Office of Regulatory Affairs.
    - 4. Office of Legal Services.
    - 5. Office of Administrative and Information Services.
    - 6. Office of Administrative Hearings.
    - 7. Office of Inspector General.
    - 8. Mine Safety Review Commission.
    - 9. Workers' Compensation Board.
    - 10. Kentucky State Nature Preserves Commission.
    - 11. Kentucky Environmental Quality Commission.

12. Kentucky Occupational Safety and Health Review Commission.
- (b) Department for Environmental Protection.
1. Office of the Commissioner.
  2. Division of Air Quality.
  3. Division of Water.
  4. Division of Environmental Services.
  5. Division of Waste Management.
  6. Division of Enforcement.
  7. Division of Compliance Assistance.
- (c) Department for Natural Resources.
1. Office of the Commissioner.
  2. Office of Technical and Administrative Support.
  3. Division of Mine Permits.
  4. Division of Mine Reclamation and Enforcement.
  5. Division of Abandoned Mine Lands.
  6. Division of Oil and Gas Conservation.
  7. Office of Mine Safety and Licensing.
  8. Division of Forestry.
  9. Division of Conservation.
- (d) Department of Public Protection.
1. Office of the Commissioner.
  2. Division of Administrative Services.
  3. Crime Victims Compensation Board.
  4. Board of Claims.
  5. Board of Tax Appeals.
  6. Kentucky Boxing and Wrestling Authority.
  7. Kentucky Horse Racing Authority.
  8. Kentucky Public Service Commission.
  9. Office of Alcoholic Beverage Control.
  10. Office of Charitable Gaming.
  11. Office of Financial Institutions.
  12. Office of Housing, Buildings and Construction.
  13. Office of Insurance.
- (e) Department of Labor.
1. Office of the Commissioner.
  2. Office of Occupational Safety and Health.
  3. Office of Labor Management Relations and Mediation.
  4. Office of Workplace Standards.

5. Office of Workers' Claims.
  6. Workers' Compensation Funding Commission.
  7. Kentucky Labor Management Advisory Council.
  8. Occupational Safety and Health Standards Board.
  9. Prevailing Wage Review Board.
  10. Kentucky Employees Insurance Association.
  11. Apprenticeship and Training Council.
  12. State Labor Relations Board.
  13. Workers' Compensation Advisory Council.
  14. Workers' Compensation Nominating Commission.
  15. Employers' Mutual Insurance Authority.
  16. Division of Administrative Services.
4. Transportation Cabinet:
- (a) Department of Highways.
    1. Office of Program Planning and Management.
    2. Office of Project Development.
    3. Office of Construction and Operations.
    4. Office of Intermodal Programs.
    5. Highway District Offices One through Twelve.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Administrative Services.
  - (d) Department of Aviation.
  - (e) Department of Intergovernmental Programs.
    1. Office of Transportation Enhancement Programs.
    2. Office of Rural and Secondary Roads.
  - (f) Office of the Secretary.
    1. Office of Legislative and Intergovernmental Affairs.
    2. Office of Public Affairs.
    3. Office of Transportation Delivery.
    4. Office for Business and Occupational Development.
    5. Office of Budget and Fiscal Management.
    6. Office of Legal Services.
    7. Office of Inspector General.
    8. Office of the Transportation Operations Center.
    9. Office of Personnel Management.
5. Cabinet for Economic Development:
- (a) Office of Administration and Support.
  - (b) Department for New Business Development.

- (c) Department of Financial Incentives.
  - (d) Department for Existing Business Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
  - (g) Office of Research and Information Technology.
  - (h) Department of Commercialization and Innovation.
  - (i) Office of Legal Services.
  - (j) Commission on Small Business Advocacy.
6. Cabinet for Health and Family Services:
- (a) Department for Public Health.
  - (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission for Children with Special Health Care Needs.
  - (e) Office of Health Policy.
  - (f) Office of the Secretary.
  - (g) Office of Legal Services.
  - (h) Office of Inspector General.
  - (i) Office of Legislative and Public Affairs.
  - (j) Department for Community Based Services.
  - (k) Department for Disability Determination Services.
  - (l) Office of the Ombudsman.
  - (m) Department for Human Support Services.
  - (n) Kentucky Commission on Community Volunteerism and Service.
  - (o) Office of Fiscal Services.
  - (p) Office of Human Resource Management.
  - (q) Office of Technology.
  - (r) Office of Contract Oversight.
  - (s) Governor's Office of Wellness and Physical Activity.
  - (t) Department for Aging and Independent Living.
7. Finance and Administration Cabinet:
- (a) Office of General Counsel.
  - (b) Office of the Controller.
  - (c) Office of Administrative Services.
  - (d) Office of Public Information.
  - (e) Department for Facilities and Support Services.
  - (f) Department of Revenue.
  - (g) Commonwealth Office of Technology.
  - (h) State Property and Buildings Commission.

- (i) Kentucky Savings Bond Authority.
  - (j) Office of Equal Employment Opportunity and Contract Compliance.
  - (k) Kentucky Employees Retirement Systems.
  - (l) Commonwealth Credit Union.
  - (m) State Investment Commission.
  - (n) Kentucky Housing Corporation.
  - (o) Kentucky Local Correctional Facilities Construction Authority.
  - (p) Kentucky Turnpike Authority.
  - (q) Historic Properties Advisory Commission.
  - (r) Kentucky Tobacco Settlement Trust Corporation.
  - (s) State Board for Proprietary Education.
  - (t) Kentucky Higher Education Assistance Authority.
  - (u) Kentucky River Authority.
  - (v) Kentucky Teachers' Retirement System Board of Trustees.
8. ***Tourism, Arts and Heritage***~~[Commerce]~~ Cabinet:
- (a) ***Kentucky*** Department of ***Travel***~~[Tourism]~~.
    - (1) Division of Tourism Services.
    - (2) Division of Marketing and ***Administration***~~[Advertising]~~.
    - (3) Division of ***Communications and Promotions***~~[Parks Marketing]~~.
  - (b) Kentucky Department of Parks.
    - (1) Division of Information Technology.
    - (2) Division of ***Human Resources***~~[Personnel and Payroll]~~.
    - (3) Division of Financial Operations.
    - (4) Division of Facilities Management.
    - (5) Division of Facilities Maintenance.
    - (6) Division of Customer Services.
    - (7) Division of Recreation.
    - (8) Division of Golf Courses.
    - (9) Division of Food Services.
    - (10) Division of Rangers.
    - (11) Division of ***Resort***~~[Eastern]~~ Parks.
    - (12) Division of ***Recreational Parks and Historic Sites***~~[Southern Parks]~~.
    - ~~(13) Division of Western Parks.~~
  - (c) Department of Fish and Wildlife Resources.
    - (1) Division of Law Enforcement.
    - (2) Division of Administrative Services.
    - (3) Division of Engineering.
    - (4) Division of Fisheries.

- (5) Division of Information and Education.
- (6) Division of Wildlife.
- (7) Division of Public Affairs.
- (d) Kentucky Horse Park.
  - (1) Division of Support Services.
  - (2) Division of Buildings and Grounds.
  - (3) Division of Operational Services.
- (e) Kentucky State Fair Board.
  - (1) Division of Expositions and Admission.
  - (2) Division of Kentucky Fair and Exposition Center Operations.
  - (3) Division of Commonwealth Convention Center.
  - (4) Division of Public Relations and Media.
  - (5) Division of Administrative Services.
  - (6) Division of Personnel Management and Staff Development.
  - (7) Division of Sales.
  - (8) Division of Security and Traffic Control.
- (f) Office of the Secretary.
  - (1)~~(g)~~ Office of Finance~~[and Administration]~~.
  - (2) ***Office of Research and Administration.***
  - (3) ***Office of Governmental Relations and Tourism Development.***
  - (4) ***Office of the Sports Authority.***
  - (5) ***Kentucky Sports Authority.***
- ~~(g)~~(h)~~ Office of Legal Affairs.~~
- ~~(i) Office of Intergovernmental Affairs.]~~
- ~~(h)~~(j)~~ Office of Human Resources.~~
- ~~(i)~~(k)~~ Office of Public Affairs and Constituent Services.~~
- ~~(l) Office of Information Technology.~~
- ~~(m) Office of the Kentucky Sports Authority.~~
  - ~~(1) Kentucky Sports Authority Board.]~~
- ~~(j)~~(n)~~ Office of Creative Services.~~
- ~~(k)~~(o)~~ Office of Capital Plaza Operations.~~
- ~~(l)~~(p)~~ Office of Arts and Cultural Heritage.~~
- ~~(m)~~(q)~~ Kentucky African-American Heritage Commission.~~
- ~~(n)~~(r)~~ Kentucky Foundation for the Arts.~~
- ~~(o)~~(s)~~ Kentucky Humanities Council.~~
- ~~(p)~~(t)~~ Kentucky Heritage Council.~~
- ~~(q)~~(u)~~ Kentucky Arts Council.~~
- ~~(r)~~(v)~~ Kentucky Historical Society.~~

- (1) Division of Museums.
  - (2) Division of Oral History and Educational Outreach.
  - (3) Division of Research and Publications.
  - (4) Division of Administration.
  - ~~(s)(w)~~ Kentucky Center for the Arts.
  - (1) Division of Governor's School for the Arts.
  - ~~(t)(x)~~ Kentucky Artisans Center at Berea.
  - ~~(y) — Martin Luther King Commission.~~
  - ~~(u)(z)~~ Northern Kentucky Convention Center.
  - ~~(v)(aa)~~ Eastern Kentucky Exposition Center.
9. Personnel Cabinet:
- (a) Office of the Secretary.
  - (b) Department for Personnel Administration.
  - (c) Office for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Office of Administrative Services.
  - (f) Office of Legal Services.
  - (g) Office of Government Training.
  - (h) Department for Employee Insurance.

III. Other departments headed by appointed officers:

- 1. Department of Military Affairs.
- 2. Governor's Office for Local Development.
- 3. Kentucky Commission on Human Rights.
- 4. Kentucky Commission on Women.
- 5. Department of Veterans' Affairs.
- 6. Kentucky Commission on Military Affairs.
- 7. Office of Minority Empowerment.
- 8. Governor's Council on Wellness and Physical Activity.

➔ Section 4. KRS 12.023 is amended to read as follows:

The following organizational units and administrative bodies shall be attached to the Office of the Governor:

- (1) Department of Military Affairs;
- (2) Governor's Office for Local Development;
- (3) Kentucky Commission on Human Rights;
- (4) Kentucky Commission on Women;
- (5) Kentucky Commission on Military Affairs;
- (6) Governor's Scholars Program;
- (7) Agricultural Development Board;
- (8) Kentucky Agricultural Finance Corporation;

- (9) Office of Minority Empowerment;
  - (a) ***The Martin Luther King Commission;***
- (10) Office of Homeland Security;
- (11) Governor's Council on Wellness and Physical Activity; and
- (12) The Governor's Office of Energy Policy.

➔Section 5. KRS 12.250 is amended to read as follows:

There are established within state government the following program cabinets:

- (1) Justice and Public Safety Cabinet.
- (2) Education Cabinet.
- (3) Environmental and Public Protection Cabinet.
- (4) Transportation Cabinet.
- (5) Cabinet for Economic Development.
- (6) Cabinet for Health and Family Services.
- (7) Finance and Administration Cabinet.
- (8) ***Tourism, Arts and Heritage***~~Commercee~~ Cabinet.
- (9) Personnel Cabinet.

➔Section 6. KRS 45.001 is amended to read as follows:

- (1) The Capital Development Committee is created. The committee shall ensure the proper coordination of state government initiatives which impact the City of Frankfort and Franklin County government and are unique to the seat of state government.
- (2) The committee shall meet at least semiannually at a time and place announced by the chairperson.
- (3) The membership of the committee shall consist of the following members or their designees:
  - (a) The mayor of the city of Frankfort;
  - (b) The county judge/executive of Franklin County;
  - (c) The secretary of the Finance and Administration Cabinet;
  - (d) The secretary of the ***Tourism, Arts and Heritage***~~Commercee~~ Cabinet;
  - (e) The secretary of the Education Cabinet;
  - (f) The commissioner of the ***Kentucky*** Department of ***Travel***~~Tourism~~;
  - (g) The executive director of the Office of Capital Plaza Operations;
  - (h) The chairman of the Frankfort/Franklin County Tourist and Convention Commission;
  - (i) A citizen at large, who is a resident of Franklin County, appointed by the Franklin County judge/executive; and
  - (j) A citizen at large, who is a resident of Frankfort, appointed by the mayor of the city of Frankfort.

The citizen-at-large members of the committee shall be appointed to a term of four (4) years each.

- (4) The Governor shall appoint the chairperson of the committee.
- (5) Members of the committee shall serve without compensation.
- (6) The Office of Capital Plaza Operations shall provide administrative support to the committee.

➔Section 7. KRS 56.777 is amended to read as follows:

- (1) A High-Performance Buildings Advisory Committee is hereby created and shall be administratively staffed by the cabinet.

- (2) The committee shall consist of fifteen (15) members and shall include:
- (a) A representative of the cabinet designated by the secretary;
  - (b) A representative of the *Tourism, Arts and Heritage*~~[Commerce]~~ Cabinet designated by the secretary;
  - (c) A representative of the Department of Education designated by the commissioner;
  - (d) A representative of the Council on Postsecondary Education designated by the president;
  - (e) A representative of the Governor's Office of Energy Policy designated by the executive director; and
  - (f) A representative appointed by the Governor from each of the following:
    1. The design and construction industry involved in public works contracting;
    2. The Kentucky Chapter of the U. S. Green Building Council;
    3. The University of Kentucky College of Design;
    4. The Kentucky Forest Industries Association;
    5. The Kentucky Society of the American Institute of Architects;
    6. The American Society of Heating, Refrigerating, and Air-Conditioning Engineers; and
    7. The Home Builders Association of Kentucky;
    8. The Associated General Contractors of Kentucky;
    9. The West Kentucky Construction Association; and
    10. The Kentucky Manufactured Housing Institute.
- (3) The representative of the cabinet shall serve as the chairperson of the committee. All appointments shall be for a term of two (2) years. Committee members shall serve until their successors are appointed and shall be eligible for reappointment.
- (4) The committee shall meet at least monthly or as convened by the chairperson.
- (5) The members of the committee shall receive reimbursement for the cost of travel to and from the meetings and any costs necessarily incurred in carrying out their duties.
- (6) The committee shall:
- (a) Consult with architects, engineers, builders, energy and conservation organizations, and other interested stakeholders, and make recommendations to the cabinet regarding:
    1. Standards and benchmarks developed under existing high-performance building programs, including the ENERGY STAR rating system, Green Globes rating system, and Leadership in Energy and Environmental Design (LEED) Green Building rating system; and
    2. Standards and guidelines developed and adopted by the U.S. Green Building Council, the American Society of Heating, Refrigerating and Air-Conditioning Engineers, and the Illuminating Engineering Society of North America partnership concerning the design of sustainable buildings to balance environmental responsibility, resource efficiency, occupant comfort and well-being, and community sensitivity;
  - (b) Assist the cabinet in the review of state building projects to ensure that building performance and efficiency are maximized to the extent economically feasible using a life-cycle cost analysis;
  - (c) Assist the cabinet in developing a process of documentation of the attainment of high-performance building standards; and
  - (d) Assist the cabinet in conducting an ongoing professional development program for state and local building designers, construction companies, school districts, building managers, and the general public on high-performance building design, construction, maintenance, and operation.
- (7) Prior to the implementation of KRS 56.770 to 56.784, the cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A necessary to implement this section. The cabinet shall consider the

recommendations made by the High-Performance Buildings Advisory Committee pursuant to subsection (6) of this section and shall establish the criteria for the high-performance building standards and the benchmarks by which the high-performance building standards will be measured. At a minimum, the cabinet shall:

- (a) Include the standards for site selection and management, water efficiency, energy conservation, waste reduction, material and resource use, and indoor air quality; and
  - (b) Require that each high-performance building be designed, constructed, or renovated so that it is capable of being rated as an ENERGY STAR building in accordance with the criteria and rating system adopted by the United States Environmental Protection Agency and in effect at the time the building is designed or, in the case of leased buildings, at the time the lease is entered into on or after July 1, 2018.
- (8) In developing the criteria for the high-performance building standards, the cabinet shall consider and encourage the use of:
- (a) Locally grown lumber from forest lands implementing sustainable practices established by the American Tree Farm System’s Sustainable Forest Initiative or the Kentucky Forest Stewardship Program established under KRS 149.330 to 149.355;
  - (b) Building materials manufactured with recycled content within the Commonwealth; and
  - (c) Renewable energy sources.

➔Section 8. KRS 62.160 is amended to read as follows:

- (1) The state officers elected by the voters of the state at large, except the Governor and the Lieutenant Governor, the heads of departments, offices, and cabinets of the state government, the adjutant general, the members of the Public Service Commission, the members of the State Fair Board and Fish and Wildlife Resources Commission, and the members of the Kentucky Board of Tax Appeals and the Alcoholic Beverage Control Board, shall each give bond. The amounts of the bonds shall be fixed by the Governor, which amounts as to those offices set forth in subsection (2) of this section shall be not less than the amounts set forth for the respective offices. At any time when it appears to be to the interest of the Commonwealth, the Governor may increase the penal sum of any bond or require a renewal of the bond with other or additional surety.

- (2) The minimum sum of the bond for the following offices shall be as follows:

Secretary of State .....	\$10,000
Attorney General .....	10,000
State Treasurer .....	300,000
Secretary for economic development .....	10,000
Commissioner of Agriculture .....	10,000
Secretary for education .....	10,000
Auditor of Public Accounts .....	25,000
Adjutant general .....	10,000
Secretary of finance and administration .....	100,000
Commissioner of revenue .....	50,000
Secretary of transportation .....	50,000
Commissioner of highways .....	50,000
Secretary of justice and public safety .....	50,000
Secretary of corrections .....	25,000
Commissioner for public health services .....	10,000
Commissioner of labor .....	5,000
Commissioner for natural resources .....	50,000
State librarian .....	5,000

Executive director of alcoholic beverage control .....	10,000
Executive director of financial institutions .....	25,000
Secretary for environmental and public protection .....	10,000
Executive director of insurance .....	50,000
Commissioner of vehicle regulation .....	10,000
Commissioner of fish and wildlife resources .....	5,000
Secretary for health and family services .....	20,000
Commissioner of environmental protection .....	10,000
Commissioner of public protection and regulation .....	10,000
Secretary of <b>Tourism, Arts and Heritage</b> <del>[commerce]</del> .....	25,000
Commissioner for community based services .....	20,000
Member of the Public Service Commission .....	10,000
Member of State Fair Board .....	10,000
Member of Fish and Wildlife Resources Commission .....	1,000
Member of Kentucky Board of Tax Appeals .....	10,000
Associate member of Alcoholic Beverage Control Board .....	5,000
Commissioner of local government .....	100,000

➔Section 9. KRS 65.6971 is amended to read as follows:

- (1) A city, county, or agency shall submit an application to the Cabinet for Economic Development for approval of a development area for infrastructure development which includes revenues from the Commonwealth, the standards for which the Cabinet for Economic Development and the **Tourism, Arts and Heritage**~~[Commerce]~~ Cabinet shall establish through their operating procedures or by the promulgation of administrative regulations in accordance with KRS Chapter 13A. The Cabinet for Economic Development shall determine whether the development area described in the application constitutes a project of the type described in this section. The Cabinet for Economic Development, upon its determination, shall assign the application to the economic development authority or the tourism development authority, as appropriate, for further consideration and approval.
- (2) A development area for purposes of infrastructure development shall:
  - (a)
    1. Consist of at least fifty (50) acres of undeveloped land, unless approved otherwise by the economic development authority or the tourism development authority in consideration of the geography of the area; or
    2. Consist of at least one (1) acre constituting a brownfield site; and
  - (b)
    1. In the case of an economic development project, be under the control of, owned by, and operated by an agency at the commencement date; or
    2. In the case of a tourism attraction project, be under the control of, leased by, owned by, or operated by an agency at the commencement date.
- (3) With respect to each city, county, or agency that applies to the economic development authority or the tourism development authority for approval of a development area for infrastructure development, the economic development authority or the tourism development authority shall request materials and make all inquiries concerning the application the economic development authority or the tourism development authority deems necessary. Upon review of the application and requested materials, and completion of inquiries, the economic development authority or the tourism development authority may grant approval for:
  - (a) The development area for infrastructure development;

- (b) Each project for which an application has been submitted to be located in the development area for infrastructure development, provided that each project approved for location in the development area for infrastructure development meets the criteria necessary in order to qualify for inducements under subchapters 22, 24, or 28 of KRS Chapter 154, or satisfies the requirements of a tourism development attraction defined under KRS 148.851;
  - (c) The percentage of the Commonwealth's portion of the increment that the Commonwealth agrees to distribute to the agency each year during the term of the grant contract;
  - (d) The maximum amount of costs for infrastructure development for which the increment may be distributed to the agency; and
  - (e) The master agreement constituting a grant contract and any addendum for each project approved for location in the development area for infrastructure development.
- (4) Prior to any approval by the economic development authority or the tourism development authority, the economic development authority or the tourism development authority shall have received an ordinance adopted by the city or county creating the development area and establishing the percentage of increment that the city and county are distributing each year to the agency for use in the infrastructure development of the development area for which economic development authority or the tourism development authority approval is sought. The economic development authority or the tourism development authority shall not approve a percentage of the Commonwealth's portion of the increment to be distributed to the agency each calendar year with respect to a development area for infrastructure development greater than the percentage approved by the city or county creating the development area.
- (5) The maximum amount of increment available for development areas for infrastructure development is one hundred percent (100%).
- (6) The terms and conditions of each grant contract, including the master agreement constituting a grant contract and any addenda, are subject to negotiations between the economic development authority or the tourism development authority and the other parties to the grant contract. The grant contract shall include but not be limited to the following provisions: the activation date, the taxes to be included in the calculation of the increment, the percentage increment to be contributed by each taxing district, the maximum amount of infrastructure development costs, a description of the development area, the termination date, subject to extension through each addendum, and the requirement of the agency to annually certify to the economic development authority or the tourism development authority as to the use of the increment for payment of infrastructure development costs.
- (7) (a) Any agency that enters into a grant contract for the release of any increments that may arise during the period of a grant contract shall, after each calendar year a grant contract is in effect, notify each taxing district obligated under the grant contract that an increment is due, and, in consultation with each taxing district, determine the respective portion of the total increment due from each taxing district. The agency shall then present the total increment due from the Commonwealth under the grant contract to the Department of Revenue for certification.
1. Upon notice from the agency, each taxing district obligated under the grant contract, other than the Commonwealth, shall release to the agency the respective portion of the total increment due under the grant contract. The agency shall certify to the Department of Revenue on a calendar year basis the amount of the increment collected.
  2. Upon certification of the total increment due from the Commonwealth by the Department of Revenue, the department is authorized and directed to transfer the increment to a tax increment financing account established and administered by the Finance and Administration Cabinet for payment of the Commonwealth's portion of the increment. Prior to disbursement by the Finance and Administration Cabinet of the funds from the tax increment financing account, the economic development authority or the tourism development authority shall notify the Finance and Administration Cabinet that the agency is in compliance with the terms of the grant contract. Upon notification, the Finance and Administration Cabinet is authorized and directed to release to the agency the Commonwealth's portion of the total increment due under the grant contract.
- (b) The Department of Revenue shall report to the economic development authority or the tourism development authority on a calendar year basis the amount of the total increment released to an agency.

- (8) The Department of Revenue shall have the authority to establish operating procedures for the administration and determination of the Commonwealth's increment.
- (9) The Department of Revenue or agency shall have no obligation to refund or otherwise return any of the increment to the taxpayer from whom the increment arose or is attributable. Further, no additional increment resulting from audit, amended returns or other activity for any period shall be transferred to the tax increment financing account after the initial release to the agency of the Commonwealth's increment for that period.

➔Section 10. KRS 65.6972 is amended to read as follows:

- (1) A city, county, or agency shall submit an application to the Cabinet for Economic Development for approval of a development area, which includes revenues from the Commonwealth, and the related project, the standards for which the Cabinet for Economic Development and the *Tourism, Arts and Heritage*~~[Commerce]~~ Cabinet shall establish through their operating procedures or by the promulgation of administrative regulations in accordance with KRS Chapter 13A. The Cabinet for Economic Development shall determine whether the development area and related project described in the application constitutes a project of the type described in KRS Chapter 154 for which the economic development authority shall have the right to approve the development area and related project or KRS Chapter 148 for which the tourism development authority shall have the right to approve the development area and related project. The Cabinet for Economic Development, upon its determination, shall assign the application to the economic development authority or the tourism development authority, as appropriate, for further consideration and approval.
- (2) A project otherwise satisfying the requirements of the project as defined in KRS 65.680, in order to qualify the project and related development area, in addition shall satisfy all of the following requirements for a project:
  - (a) Represent new economic activity in the Commonwealth;
  - (b) Result in a minimum capital investment of ten million dollars (\$10,000,000);
  - (c) Result in the creation of a minimum of twenty-five (25) new full-time jobs for Kentucky residents to be held by persons subject to the personal income tax of the Commonwealth within two (2) years of the date of the final resolution authorizing the development area and the project;
  - (d) Result in a net positive economic impact to the economy of the Commonwealth, taking into consideration any substantial adverse impact on existing Commonwealth businesses;
  - (e) Generate a minimum of twenty-five percent (25%) of the total revenues derived from the project attributable to sources outside of the Commonwealth during each year a grant contract is in effect;
  - (f) Result in a unique contribution to or preservation of the economic vitality and quality of life of a region of the Commonwealth; and
  - (g) Not be primarily devoted to the retail sale of goods.
- (3) After assignment of the application for the project and related development area by the Cabinet for Economic Development:
  - (a) The economic development authority or the tourism development authority, as appropriate, shall engage the services of a qualified independent consultant to analyze data related to the project and the development area, who shall prepare a report for the economic development authority or the tourism development authority, as appropriate, with the following findings:
    - 1. The percentage of revenues derived from the development area which are generated from business not located in the Commonwealth;
    - 2. The estimated amount of increment the development area is expected to generate over a twenty (20) year period from the projected activation date;
    - 3. The estimated amount of ad valorem taxes, other than the school or fire district portion of ad valorem taxes, from real property, Kentucky individual income tax, Kentucky sales and use taxes, local insurance premium taxes, occupational license fees, or other such state taxes which would be displaced within the Commonwealth, to reflect economic activity which is being shifted over the twenty (20) year period;

4. The estimated increment the development area is expected to generate over the twenty (20) year period, equal to the estimated amount set forth in paragraph (a)2. of this subsection minus the estimated amount set forth in paragraph (a)3. of this subsection; and
  5. The project or development area will not occur if not for the designation of the development area and granting of increments by the Commonwealth to the development area.
- (b) The independent consultant shall consult with the economic development authority or the tourism development authority, as appropriate, the Office of State Budget Director and the Finance and Administration Cabinet in the development of the report. The Office of State Budget Director and the Finance and Administration Cabinet shall agree as to methodology to be used and assumptions to be made by the independent consultant in preparing its report. On the basis of the independent consultant's report and prior to any approval of a project by the economic development authority or the tourism development authority, as appropriate, the Office of State Budget Director and the Finance and Administration Cabinet shall certify whether there is a projected net positive economic impact to the Commonwealth and the expected amount of incremental state revenues from the project to the economic development authority or tourism development authority, as appropriate. Approval shall not be granted if it is determined that there is no projected net positive economic impact to the Commonwealth.
- (c) The primary project entity shall pay all costs associated with the independent consultant's report.
- (4) With respect to each city, county, or agency that applies for approval of a project and development area, the economic development authority or the tourism development authority, as appropriate, shall request materials and make all inquiries concerning the application the economic development authority or the tourism development authority, as appropriate, deems necessary. Upon review of the application and requested materials, and completion of inquiries, the economic development authority or the tourism development authority, as appropriate, may by resolution grant approval for:
- (a) The development area and project for which an application has been submitted;
  - (b) The percentage of the Commonwealth's portion of the increment that the Commonwealth agrees to have distributed to the agency each year during the term of the grant contract;
  - (c) The maximum amount of costs for the project for which the increment may be distributed to the agency; and
  - (d) The grant contract.
- (5) Prior to any approval by the economic development authority or the tourism development authority, as appropriate, the economic development authority or the tourism development authority shall have received an ordinance adopted by the city or county creating the development area and approving the project and establishing the percentage of increment that the city and county are distributing each year to the agency to pay for the development area for which economic development authority or tourism development authority approval is sought. The economic development authority or the tourism development authority, as appropriate, shall not approve a percentage of the Commonwealth's portion of the increment to be distributed to the agency each year with respect to a development area and project greater than the percentage approved by the city or county creating the development area.
- (6) The amount of increment available for a development area shall be no more than eighty percent (80%) per year, but shall in no case exceed twenty-five percent (25%) of the project costs during the term of the grant agreement.
- (7) The terms and conditions of each grant contract are subject to negotiations between the economic development authority or the tourism development authority, as appropriate, and the other parties to the grant contract. The grant contract shall include but not be limited to the following provisions: the activation date, the agreed taxes to be included in the calculation of the increment, the percentage increment to be contributed by the Commonwealth and other taxing districts, the maximum amount of project costs, a description of the development area and the project, the termination date, and the requirement that the agency annually certify to the economic development authority or tourism development authority, as appropriate, as to the use of the increment for payment of project costs in the development area.
- (8) The agency responsible for the development area that enters into the grant contract shall, after each year the grant contract is in effect, certify to the economic development authority or the tourism development authority, as appropriate:

- (a) The amount of the increment used during the previous calendar year for the project costs; and
  - (b) That more than twenty-five percent (25%) of the total revenues derived from the project during the previous calendar year were attributable to sources outside the Commonwealth.
- (9) (a) Any agency that enters into a grant contract for the release of any increments that may arise during the period of a grant contract shall, after each calendar year a grant contract is in effect, notify each taxing district obligated under the grant contract that an increment is due. In consultation with each taxing district, the agency shall determine the respective portion of the total increment due from each taxing district, and the determination of the agency shall be reviewed by an independent certified public accountant. The agency shall submit to the Department of Revenue for certification its determination with respect to the total increment due together with the review of the certified public accountant and detailed information concerning ad valorem taxes, Kentucky individual income tax, Kentucky sales and use taxes, local insurance premium taxes, occupational license fees, and other such state taxes as may be determined by the Department of Revenue, including withholding taxes of employees of each taxpayer located in the development area.
- 1. Upon notification to the agency of the total increment by the Department of Revenue and notice from the agency, each taxing district obligated under the grant contract, other than the Commonwealth, shall release to the agency the respective portion of the total increment due under the grant contract. The agency shall certify to the Department of Revenue on a calendar year basis the amount of the increments collected.
  - 2. Upon certification of the total increment due from the Commonwealth by the Department of Revenue, the department is authorized and directed to transfer the increment to a tax increment financing account established and administered by the Finance and Administration Cabinet for payment of the Commonwealth's portion of the increment. Prior to disbursement by the Finance and Administration Cabinet of the funds from the tax increment financing account, the economic development authority or the tourism development authority, as appropriate, shall notify the Finance and Administration Cabinet that the agency is in compliance with the terms of the grant contract. Upon notification, the Finance and Administration Cabinet is authorized and directed to release to the agency the Commonwealth's portion of the total increment due under the grant contract.
- (b) The Department of Revenue shall report to the economic development authority or the tourism development authority, as appropriate, on a calendar year basis the amount of the total increment released to an agency.
- (10) The Department of Revenue shall have the authority to establish operating procedures for the administration and determination of the Commonwealth's increment.
- (11) The Department of Revenue or agency shall have no obligation to refund or otherwise return any of the increment to the taxpayer from whom the increment arose or is attributable. Further, no additional increment resulting from audit, amended returns or other activity for any period shall be transferred to the trust account established under subsection (9)(a)2. of this section and administered by the Finance and Administration Cabinet after the initial release to the agency of the Commonwealth's increment for that period.

➔Section 11. KRS 65.7069 is amended to read as follows:

- (1) The State Tax Increment Financing Commission is hereby created as an independent agency of the state within the meaning of KRS Chapter 12. The commission shall be composed of the following members:
- (a) The secretary of the Finance and Administration Cabinet, who shall be the chair thereof;
  - (b) The state budget director;
  - (c) The secretary of the Cabinet for Economic Development;
  - (d) The secretary of the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet;
  - (e) The chair of the Kentucky Economic Development Finance Authority;
  - (f) The dean of the University of Kentucky Gatton College of Business and Economics; and
  - (g) The dean of the University of Louisville College of Business and Public Administration.

- (2) The commission shall review all applications for state participation in tax increment financing projects and shall approve those proposals it determines meet the requirements established by KRS 65.7071, 65.7073, 65.7075, 65.7077, 65.7079, and 65.7081.
- (3) Members of the commission shall serve without compensation, but may receive reimbursement for their actual and necessary expenses incurred in the performance of their duties.
- (4) Any four (4) members of the commission shall constitute a quorum and shall by majority vote be authorized to transact any and all business of the commission.
- (5) The commission shall meet at least two (2) times each year, but may meet more frequently upon the call of the chair or a request made by any four (4) members of the commission.
- (6) The commission shall be attached to the Finance and Administration Cabinet for administrative purposes and staff services. All cabinets, departments, divisions, agencies, and officers of the Commonwealth shall furnish the commission with necessary assistance, resources, information, records, or advice as it may require to fulfill its duties.
- (7) The commission shall prepare bylaws and shall establish procedures applicable to the operations of the commission.
- (8) The commission shall have the authority to promulgate any regulations necessary for the administration of KRS 65.7069, 65.7071, 65.7073, 65.7075, 65.7077, 65.7079, and 65.7081 in accordance with KRS Chapter 13A.
- (9) On or before February 15, 2008, and each year thereafter, the commission shall provide the Governor and the Legislative Research Commission with an annual report, which shall include but shall not be limited to the following for the prior calendar year:
  - (a) A list of applications considered by the commission during the prior calendar year, including the name of the applicant, a description of the project, the local tax revenues or other revenues pledged, the level of participation requested from the Commonwealth, and whether the application was approved; and
  - (b) For each approved application, the report shall include:
    1. The total commitment made by the Commonwealth, detailed by type of tax and estimated incremental revenues pledged for each tax;
    2. The length of the commitment; and
    3. The portion of the development area included in the project.

➔Section 12. KRS 139.536 is amended to read as follows:

- (1) (a) In consideration of the execution of the agreement as defined in KRS 148.851 and notwithstanding any provision of KRS 139.770 to the contrary, the approved company as defined in KRS 148.851 excluding its lessees, may be granted a sales tax refund from the Kentucky sales tax imposed by KRS 139.200 on the sales generated by or arising at the tourism attraction project as defined in KRS 148.851.
- (b) The approved company shall have no obligation to refund or otherwise return any amount of this sales tax refund to the persons from whom the sales tax was collected.
- (c) For all tourism attraction projects except those identified in paragraph (d) of this subsection, the term of the agreement granting the sales tax refund shall be ten (10) years.
- (d) The term of the agreement granting the sales tax refund shall be twenty (20) years for a tourism attraction project that includes a facility, including but not limited to a lodging facility or shrine that is:
  1. a. Located on property owned by the Commonwealth, or leased by the Commonwealth from the federal government; and
  - b. Acquired for use in the state park system pursuant to the provisions of KRS 148.028, and operated by the Kentucky Department of Parks pursuant to the provisions of KRS 148.021 or the Kentucky Horse Park Commission pursuant to the provisions of KRS 148.258 to 148.320; or
  2. Located on property owned or leased by the federal government and identified as a national park.

- (e) This time period shall commence on the later of:
1. The final approval for purposes of the inducements; or
  2. The completion date specified in the agreement.
- (2) Any sales tax collected by an approved company as defined in KRS 148.851 on sales transacted after final approval but prior to the commencement of the term of the agreement, including any approved company that has received final approval prior to July 15, 2000, shall be refundable as if collected after the commencement of the term and applied to the approved company's first fiscal year's refund after activation of the term and without changing the term.
- (3) (a) The total sales tax refund allowed to the approved company over the term of the agreement in subsection (1)(c) of this section shall be equal to the lesser of the total amount of the sales tax liability of the approved company and its lessees or twenty-five percent (25%) of the approved costs.
1. The sales tax refund shall accrue over the term of the agreement in an annual amount equal to two and one-half percent (2.5%) of the approved cost.
  2. Notwithstanding the foregoing two and one-half percent (2.5%) limitation, any unused inducements as set forth in KRS 148.851(9) from a previous year may be carried forward to any succeeding year during the term of the agreement until the entire twenty-five percent (25%) of the approved costs have been received through sales tax refunds.
- (b) The total sales tax refund allowed to the approved company over the term of the agreement in subsection (1)(d) of this section shall be equal to the lesser of the total amount of the sales tax liability of the approved company and its lessees or fifty percent (50%) of the approved costs.
1. The sales tax refund shall accrue over the term of the agreement in an annual amount equal to two and one-half percent (2.5%) of the approved cost.
  2. Notwithstanding the foregoing two and one-half percent (2.5%) limitation, any unused inducements as set forth in KRS 148.851(9) from a previous year may be carried forward to any succeeding year during the term of the agreement until the entire fifty percent (50%) of the approved costs have been received through sales tax refunds.
- (4) Notwithstanding subsection (3) of this section, to the extent that the tourism attraction defined in KRS 148.851 includes a lodging facility located on recreational property owned or leased by the Commonwealth or federal government and the facilities have received prior approval from the appropriate state or federal agency, the total sales tax refund allowed to the approved company over the term of the agreement shall be the lesser of the total amount of sales tax liability or fifty percent (50%) of the approved costs. The sales tax refund shall accrue over the term of the agreement in an annual amount equal to five percent (5%) of the approved cost. Notwithstanding the foregoing five percent (5%) limitation, any unused inducements as set forth in KRS 148.851(9) from a previous year may be carried forward to any succeeding year during the term of the agreement until the entire fifty percent (50%) of the approved costs have been received through the sales tax refunds.
- (5) By October 1 of each year the department shall certify to the authority and the secretary of the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet for the preceding fiscal year for all approved companies for which sales tax returns were filed with respect to a tourism attraction project, the sales tax liability of the approved companies receiving inducements under this section and KRS 148.851 to 148.860, and their lessees, and the amount of the sales tax refunds issued pursuant to subsections (1) and (4) of this section.
- (6) Interest shall not be allowed or paid on any refund made under the provisions of this section.
- (7) The department may promulgate administrative regulations and require the filing of forms designed by the department to reflect the intent of this section and KRS 148.851 to 148.860.

➔Section 13. KRS 139.537 is amended to read as follows:

- (1) As used in this section, "coal-based near zero emission power plant" means a facility designed to achieve minimum emissions, built in Kentucky for demonstrating the feasibility of producing electricity and hydrogen from coal, whose site has been determined acceptable from an environmental impact perspective in a record of

decision published by the United States Department of Energy after January 1, 2006, and that has received all applicable local planning and zoning approvals.

- (2) Notwithstanding all other provisions of this chapter, effective July 1, 2006, the taxes imposed by this chapter shall not apply to the sale, rental, storage, use, or other consumption of tangible personal property used to construct, repair, renovate, or upgrade a coal-based near zero emission power plant, including repair and replacement parts purchased for the plant.
- (3) The ~~Commerce~~ Cabinet **for Economic Development, with input from the Environmental and Public Protection Cabinet**, shall establish standards for making applications for the exemptions provided in this section. Prior to the ~~Commerce~~ Cabinet **for Economic Development** granting approval, the Office of the Budget Director shall determine if the power plant results in a net positive economic impact to the Commonwealth and shall provide a certification in writing to the ~~Commerce~~ Cabinet **for Economic Development**. The ~~Commerce~~ Cabinet **for Economic Development** shall notify the department in writing that a power plant has qualified for the exemptions.
- (4) The ~~Commerce~~ Cabinet **for Economic Development** may promulgate administrative regulations necessary to administer the application and certification process of this section.
- (5) The department may promulgate administrative regulations necessary to administer the exemptions provided in this section.
- (6) The provisions of this section shall not apply to sales or purchases made after December 31, 2030.

➔Section 14. KRS 142.406 is amended to read as follows:

- (1) There is hereby created and established in the State Treasury a trust and agency account to be known as the tourism, meeting, and convention marketing fund. The fund shall be administered by the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet, with the approval of the Governor's Office for Policy and Management.
- (2) All tax receipts from the tax imposed under KRS 142.400 shall be deposited into the tourism, meeting, and convention marketing fund, and shall be appropriated for the purposes set forth in subsection (3) of this section. The fund shall also contain any other money contributed, allocated, or appropriated to it from any other source. Money in the fund shall be invested by the Finance and Administration Cabinet in instruments authorized under KRS 42.500. Investment proceeds shall be deposited to the credit of the fund. Money in the fund shall not lapse but shall be carried forward to the next fiscal year or biennium.
- (3) The tourism, meeting, and convention marketing fund shall be used for the sole purpose of marketing and promoting tourism in the Commonwealth including expenditures to market and promote events and venues related to meetings, conventions, trade shows, cultural activities, historical sites, recreation, entertainment, natural phenomena, areas of scenic beauty, craft marketing, and any other economic activity that brings tourists and visitors to the Commonwealth. Marketing and promoting tourism shall not include expenditures on capital construction projects.
- (4) By September 1 of each year, the secretary of the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet shall report to the Governor and the Legislative Research Commission concerning the receipts, expenditures, and carryforwards of the fund for the preceding fiscal year.

➔Section 15. KRS 146.654 is amended to read as follows:

- (1) The board of directors of the Kentucky Natural History Museum shall establish the Kentucky Natural History Museum. The board shall implement KRS 146.650 to 146.666 to the extent practical prior to operation of the museum. Working to achieve the public purposes that are the goals of implementation of KRS 146.650 to 146.666 shall not be dependent on the existence and operation of the museum in a physical place.
- (2) The board shall be administratively linked to the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet.
- (3) To accomplish the purposes of KRS 146.650 to 146.666, the board is authorized to:
  - (a) Acquire and hold property by deed, gift, devise, bequest, lease, exchange, purchase, or transfer;
  - (b) Plan for, develop, construct, and maintain buildings;
  - (c) Enter into agreements with state, federal, or local agencies;
  - (d) Employ and contract with individuals, corporations, or other business entities to accomplish the purposes of KRS 146.650 to 146.666;

- (e) Accept and administer appropriations, gifts, grants, devises, and bequests of money, securities, or other items of value; and
- (f) Carry out any other functions necessary to accomplish the purposes of KRS 146.650 to 146.666.

- (4) To accomplish the purposes of KRS 146.650 to 146.666, the board may provide and administer grants to public and private entities.

➔Section 16. KRS 148.022 is amended to read as follows:

- (1) The Governor's Office for Local Development shall administer and operate the outdoor recreation programs of the state and shall be responsible for developmental planning and the administration of United States Bureau of Outdoor Recreation funds.
- (2) All functions of the Commonwealth relating to the Breaks Interstate Park shall be attached to the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet for administrative purposes.

➔Section 17. KRS 148.260 is amended to read as follows:

- (1) There is hereby created and established an agency of state government to be known as the Kentucky Horse Park Commission which shall constitute a separate administrative body of state government within the meaning of KRS 12.010(8) and under the provisions of KRS 12.015 shall be attached to the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet for administrative purposes.
- (2) The commission shall be composed of seventeen (17) members who possess the ability to provide broad management expertise and direction in the operation of the Kentucky Horse Park and shall, to the extent possible, represent the diverse interest of the Kentucky horse industry. Of these, fifteen (15) members shall be appointed by the Governor. Two (2) of these appointed members of the commission shall represent the equine industry; and two (2) members shall be active in industry and commerce. The secretary of the Cabinet for Economic Development and the secretary of the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet shall serve as ex officio members with full voting rights. Any vacancy on the commission shall be filled by the Governor for the unexpired term.
- (3) The appointed members of the commission shall hold their offices for a term of four (4) years, except that for the initial appointment to the commission, two (2) members shall serve a term of two (2) years, two (2) members shall serve a term of three (3) years, and three (3) members shall serve a term of four (4) years.
- (4) The commission shall meet quarterly and shall be headed by a chairman appointed by the Governor. The chairman shall preside over the commission meetings. The chairman may call special meetings of the commission upon a request of the majority of the members of the commission.
- (5) Members shall be reimbursed only for expenses incurred in the discharge of official business, subject to regulations established by the Finance and Administration Cabinet. All expenses reimbursed to members shall be paid from operating funds of the Kentucky Horse Park.
- (6) The commission shall establish and maintain an office at the Kentucky State Horse Park for the transaction of its business and shall not establish any branch office. The commission may hold meetings at any other place when the convenience of the commission requires.
- (7) The commission shall be authorized to adopt bylaws providing for the call of its meetings, which shall be held at least quarterly, and for its operating procedures. A quorum of the commission shall consist of eight (8) members, and a quorum of members present at any duly-called meeting may act upon any matter before it for consideration. Each member shall have one (1) vote.
- (8) The Governor may establish an advisory committee to advise in the administration, development and operation of the horse park or other functions, activities, and programs provided for or authorized by KRS 148.260 to 148.320.

➔Section 18. KRS 148.522 is amended to read as follows:

- (1) The **Tourism, Arts and Heritage**~~Commerce~~ Cabinet shall consist of the Office of the Secretary, the Office of Legal Affairs, the Office of Finance~~and Administration~~, the Office of **Governmental Relations and Tourism Development**~~Intergovernmental Affairs~~, the Office of Human Resources, the Office of Public Affairs and Constituent Services,~~the Office of Information Technology, the Office of Energy Policy,~~ the Office of the

Kentucky Sports Authority, the Office of Arts and Cultural Heritage, the Office of Creative Services, the Office of Capital Plaza Operations, *the Office of Research and Administration*, the *Kentucky* Department of *Travel*~~[Tourism]~~, the Kentucky Department of Parks, the Tourism Development Finance Authority, and such other divisions and sections as are from time to time deemed necessary for the proper and efficient operation of the cabinet subject to the provisions of KRS Chapter 12.

- (2) The *Tourism, Arts and Heritage*~~[Commerce]~~ Cabinet shall encourage the development of the film industry in Kentucky and shall perform all film promotional functions.
- (3) The Office of Legal Affairs shall be headed by a general counsel appointed by the secretary pursuant to KRS 12.210, shall provide legal services for the cabinet, and shall be directly responsible to the secretary.
- (4) The *Kentucky* Department of *Travel*~~[Tourism]~~ shall be headed by a commissioner appointed by the Governor pursuant to the provisions of KRS 12.040. The commissioner shall have the authority and responsibility for the promotion, development, and support services for the tourism industry within the Commonwealth.
- (5) The Divisions of Tourism Services, Marketing and *Administration*~~[Advertising]~~, and *Communications and Promotions*~~[Parks Marketing]~~ are created within the *Kentucky* Department of *Travel*~~[Tourism]~~. Each division shall be headed by a division director who shall be appointed by the commissioner of the department pursuant to the provisions of KRS 12.050.

➔Section 19. KRS 148.527 is amended to read as follows:

- (1) The *Kentucky* Department of *Travel*~~[Tourism]~~ of the *Tourism, Arts and Heritage*~~[Commerce]~~ Cabinet shall, after appropriate research has been conducted, establish and maintain a Kentucky Certified Retirement Community Program whereby retirees and those planning to retire are encouraged to make their homes in Kentucky communities that have met certain criteria to be certified by the *Tourism, Arts and Heritage*~~[Commerce]~~ Cabinet as a Kentucky certified retirement community. In support of this program, the *Kentucky* Department of *Travel*~~[Tourism]~~ shall identify certain issues of interest to retirees or potential retirees in order to inform them of the benefits of living in Kentucky. Issues of interest to retirees may include but are not limited to:
  - (a) Kentucky's state and local tax structure;
  - (b) Housing opportunities and cost;
  - (c) Climate;
  - (d) Personal safety;
  - (e) Working opportunities;
  - (f) Health care services and other services along the continuum of services, including but not limited to home and community based services;
  - (g) Transportation;
  - (h) Continuing education;
  - (i) Leisure living;
  - (j) Recreation;
  - (k) The performing arts;
  - (l) Festivals and events;
  - (m) Sports at all levels; and
  - (n) Other services and facilities that are necessary to enable persons to age in the community and in the least restrictive environment.
- (2) The mission of the Kentucky Certified Retirement Community Program shall be to:
  - (a) Promote the state as a retirement destination to retirees and those persons and families who are planning retirement both in and outside of Kentucky;
  - (b) Assist Kentucky communities in their efforts to market themselves as retirement locations and to develop communities that retirees would find attractive for a retirement lifestyle;

- (c) Assist in the development of retirement communities and lifecare communities for economic development purposes and as a means of providing a potential workforce and enriching Kentucky communities; and
  - (d) Encourage tourism to Kentucky in the form of mature market travel to Kentucky in reference to retirement desirability for the future, and for the visitation of those who have chosen to retire in Kentucky.
- (3) The ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet shall coordinate the development and planning of the Kentucky Certified Retirement Community Program with the Cabinet for Economic Development, the Department for Aging and Independent Living in the Cabinet for Health and Family Services, the Kentucky Commission on Military Affairs, the Department of Veterans' Affairs, and other state and local groups interested in participating in and promoting the program.
- (4) To obtain certification as a Kentucky certified retirement community, the following requirements shall be met:
- (a) Official community support. A resolution by the governing authority endorsing the local retirement recruitment effort is required;
  - (b) Designation of a sponsor. The program shall have an official sponsoring organization that shall appoint an individual who will be accountable to the community and to the state;
  - (c) Funding. The sponsoring organization must commit a minimum of ten thousand dollars (\$10,000) per year for the local program;
  - (d) Health services. There shall be a hospital and emergency medical services that are readily accessible to the community;
  - (e) Available housing. The community shall maintain information on both resale housing and rental housing to ensure that the quantity is sufficient to meet the needs of potential new retiree residents;
  - (f) Retiree desirability assessment. The community shall conduct a retiree desirability assessment that shall focus on a number of factors including, but not limited to, medical services, adult education opportunities, shopping, recreation, cultural opportunities, safety, aging services, and a continuum of care including home and community based services, housing for the elderly, assisted living, personal care, and nursing care facilities;
  - (g) Establishment of subcommittees. Each locality shall have a general retiree attraction committee and a minimum of four (4) subcommittees as follows:
    - 1. Community inventory/assessment subcommittee. This subcommittee shall conduct an unbiased inventory and assessment of whether the community can offer the basics that retirees demand and develop a professional portfolio containing brief biographies of professionals in the community;
    - 2. Community relations/fundraising subcommittee. This subcommittee shall locate retirees living in the community, act as salespersons for the program, raise funds necessary to run the program, recruit subcommittee members, organize special events, and promote and coordinate the program with local entities;
    - 3. Marketing and promotion subcommittee. This subcommittee shall establish a community image, evaluate target markets, develop and distribute promotional material, and coordinate advertising and public relations campaigns; and
    - 4. Ambassadors subcommittee. This subcommittee shall be the first contact with prospective retirees and provide tour guides when prospects visit the community. The subcommittee shall respond to inquiries, log contacts made, provide tours, invite prospects to special community events, and maintain continual contact with prospects until the time that the prospect makes a retirement location decision;
  - (h) Community profile. The sponsor shall develop a community profile similar to that used by many chambers of commerce. It will include factors such as crime statistics, tax information, recreational opportunities, and housing availability; and

- (i) Written marketing plan. The retiree attraction committee shall submit a marketing plan that shall detail the mission, the target market, the competition, an analysis of the community's strengths, weaknesses, opportunities and threats, and the strategies the program will employ to attain its goals.
- (5) During the certification process, a representative of the retirement attraction committee shall attend state training meetings.
- (6) The retiree attraction committee shall work to gain the support of churches, clubs, businesses, and the local media, as this support is necessary for the success of the program.
- (7) Within ninety (90) days of certification, the locality shall submit a complete retiree attraction package to the **Kentucky** Department of ~~Travel~~**Tourism**.
- (8) Before certification is awarded, the retiree attraction committee shall submit a written three (3) year commitment to the program and a long-term plan outlining steps the community will undertake to maintain its desirability as a destination for retirees. The long-range plan shall outline plans to correct any facility and service deficiencies identified in the retiree desirability assessment required by subsection (4)(f) of this section. The written commitment and long-range plan shall be forwarded to the **Kentucky** Department of ~~Travel~~**Tourism** of the ~~Commerce~~ Cabinet.
- (9) Upon being certified as a Kentucky certified retirement community, the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet shall provide the following assistance to the community:
  - (a) Assistance in the training of local staff and volunteers;
  - (b) Ongoing oversight and guidance in marketing, plus updating on national retirement trends;
  - (c) Inclusion in the state's national advertising and public relations campaigns and travel show promotions, including a prominent feature on the cabinet's Internet Web site;
  - (d) Eligibility for state financial assistance for brochures, support material, and advertising; and
  - (e) An annual evaluation and progress assessment on maintaining and improving the community's desirability as a home for retirees.
- (10) The **Tourism, Arts and Heritage**~~Commerce~~ Cabinet shall promulgate administrative regulations to implement the provisions of this section.

➔Section 20. KRS 148.561 is amended to read as follows:

The Appalachian/Kentucky Artisans Gateway Center Authority is created and established as an independent, de jure municipal corporation and political subdivision of the Commonwealth that shall be a public body corporate and politic. The authority shall develop, operate, and manage the Appalachian/Kentucky Artisans Gateway Center funded by 1998 Ky. Acts ch. 615, Part X, under the reference "Artisans Center--Berea." The authority shall be attached to the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet for administrative purposes.

➔Section 21. KRS 148.562 is amended to read as follows:

- (1) The authority shall be governed by a board of directors consisting of thirteen (13) members as follows:
  - (a) Secretary of the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet, or his or her designee;
  - (b) Secretary of the Transportation Cabinet, or his or her designee;
  - (c) Secretary of the Education Cabinet, or his or her designee;
  - (d) Secretary of the Finance and Administration Cabinet, or his or her designee;
  - (e) Three (3) members appointed by the Governor, one (1) to be a representative of the Kentucky Arts Council, and two (2) to be at-large members; and
  - (f) Six (6) members appointed by the mayor of the city of Berea to include two (2) representatives of Berea city government, two (2) representatives of Berea College recommended by the president of Berea College, one (1) representative of Eastern Kentucky University recommended by the president of Eastern Kentucky University, and one (1) at-large member.
- (2) Members shall serve for staggered terms of four (4) years beginning August 1, 2000, except that of the initial appointments:

- (a) One (1) appointment by the Governor and two (2) appointments by the mayor of the city of Berea shall each serve a term of four (4) years;
  - (b) Two (2) appointments by the mayor of the city of Berea and one (1) appointment by the Governor shall each serve a term of three (3) years;
  - (c) One (1) appointment by the Governor and one (1) appointment by the mayor of the city of Berea shall each serve a term of two (2) years; and
  - (d) One (1) appointment by the mayor of the city of Berea shall serve a term of one (1) year.
- (3) The Governor shall appoint a chair from among the members of the board.
  - (4) A quorum of the board shall consist of seven (7) members, with a majority of members present authorized to act upon any matter legally before the authority.
  - (5) A member may be removed by the appointing authority only for neglect of duty, misfeasance, or malfeasance, and after being afforded an opportunity for a hearing in accordance with KRS Chapter 13B, relating to administrative hearings.

➔Section 22. KRS 148.563 is amended to read as follows:

- (1) An executive director shall be appointed in accordance with KRS 12.050.
  - (a) The executive director shall at all times attempt to accommodate the desires expressed by the board of directors.
  - (b) The executive director shall keep all minutes, records, and orders of the authority and shall be responsible for the preservation of all the documents. The documents shall be public records subject to KRS 61.870 to 61.884, relating to open records.
- (2) The staff of the authority, including its executive director, shall be employees of the *Tourism, Arts and Heritage*~~Commerce~~ Cabinet.

➔Section 23. KRS 148.566 is amended to read as follows:

The authority shall have the following duties and authorities:

- (1) The authority shall supervise the design, construction, and operation of the center and shall provide all management functions for the facility and for any other property acquired or leased under its powers established by law.
- (2) The authority shall promote the growth and development of statewide tourism related to arts and crafts destinations throughout the state and shall ensure that its efforts conform to marketing and promotion strategies devised by the *Tourism, Arts and Heritage*~~Commerce~~ Cabinet.
- (3) The authority shall have the exclusive control of scheduling all exhibitions, performances, retail activities, and concessions in the center. The authority shall have a prior lien upon the property of any private exhibitor, concessionaire, or other person holding an exhibition or performance or operating a concession in the center and may sell the property upon ten (10) days' notice to satisfy any indebtedness.
- (4) The authority shall participate with local hotels and the travel industry to develop tourist packages and additional services to attract events, conferences, and conventions to the region.
- (5) The authority may take, acquire, and hold property, and all interests therein, by deed, purchase, gift, devise, bequest, or lease, or by transfer from the State Property and Buildings Commission and may dispose of any property so acquired in any manner provided by law.
- (6) The authority may adopt administrative regulations in accordance with KRS Chapter 13A only for governing the operation, maintenance, or use of property under its custody and control.
- (7) The authority may levy a surcharge on tickets for functions held within the center to contribute to operating revenue.
- (8) The authority may sue and be sued and maintain and defend legal actions in its name.

- (9) Members of the authority shall serve without compensation, but shall be reimbursed for actual and necessary travel expenses incurred in the performance of their duties. The reimbursement shall be in accordance with administrative regulations promulgated under KRS Chapter 13A by the Finance and Administration Cabinet.

➔Section 24. KRS 148.590 is amended to read as follows:

- (1) There is created the Kentucky Sports Authority, which shall be attached to the *Tourism, Arts and Heritage*~~Commerce~~ Cabinet, Office of the Secretary, for administrative purposes.
- (2) The authority shall consist of fifteen (15) members, including the Lieutenant Governor, the secretary of the *Tourism, Arts and Heritage*~~Commerce~~ Cabinet, the secretary of the Environmental and Public Protection Cabinet, and twelve (12) members appointed by the Governor. The members appointed by the Governor shall include representatives of the Kentucky Racing Authority, the fish and wildlife community, and the Kentucky Boxing and Wrestling Authority.
- (3) The Lieutenant Governor shall serve as chairperson of the authority. Members shall elect other officers as they deem necessary. Of the members initially appointed by the Governor, one-third (1/3) shall serve a term of four (4) years, one-third (1/3) shall serve a term of three (3) years, and one-third (1/3) shall serve a term of two (2) years. All succeeding terms shall be for four (4) years.
- (4) The secretary of the *Tourism, Arts and Heritage*~~Commerce~~ Cabinet shall appoint an executive director, with the prior written approval of the Governor, to head the authority. The cabinet shall provide additional administrative support to the authority from the cabinet's existing staff as necessary.
- (5) The authority shall meet monthly and at other times as necessary, upon the call of the chairperson. Members shall be reimbursed for expenses incurred in performing the authority's duties, functions, and responsibilities.
- (6) The authority's primary responsibility shall be to recruit, promote, assist, place, and develop sporting events, facilities, attractions, and programs in the Commonwealth, with the ultimate goal of developing commerce, the economy, job opportunities, and revenue streams. The authority's duties shall include but not be limited to the following:
  - (a) Lead efforts to attract national and regional sporting events to Kentucky by working with the National Collegiate Athletic Association, the National Association of Intercollegiate Athletics, the Professional Golf Association, the National Football League, the National Basketball Association, the Professional Bowlers Association, the Professional Tennis Tour, the National Association for Stock Car Auto Racing, the United States Olympic Committee, Bassmasters, and other nationally recognized organizations;
  - (b) Work toward establishing professional franchises in Kentucky, and develop an overall strategic plan to recruit and retain all forms of professional and amateur sporting events, including boxing, motor vehicle racing, baseball, football, soccer, hockey, tennis, gymnastics, volleyball, and figure skating;
  - (c) Identify and propose improvements for sporting activity infrastructure, including opportunities for private and public partnership on infrastructure development; present for the Governor's approval any financial plan that would require state tax dollars to build new athletic facilities; and upon the Governor's approval of a proposed financial plan, present it to the General Assembly;
  - (d) Foster relationships between sporting event organizers and event sponsors, and between and among state agencies, and provide advice and direction for increasing the number and quality of sporting events;
  - (e) Evaluate various sports and sports-related activities and entities, such as auto racing, summer instructional camps for cheerleading, and sports agents, and make written recommendations to the Governor and the General Assembly as to whether additional regulation, licensing, or taxing are necessary;
  - (f) Attempt to involve renowned Kentucky athletes in the war against drugs and the promotion of the Governor's Wellness Initiative;
  - (g) Work with Kentucky Educational Television and other media outlets to establish and develop a twenty-four (24) hour television channel devoted to promoting and highlighting healthy lifestyles, sports, and applicable government programs, such as the state park system and the Department of Fish and Wildlife Resources;

- (h) Develop and recommend to the Governor, as necessary, legislation and administrative regulations to further the purposes of the authority, provide additional professional and amateur participation by Kentucky's citizens, provide adequate safety measures and ethical operations for sporting events, recruit and maintain professional and amateur sporting events, and address the fiscal and tax implications of the issues and activities of this section; and
- (i) Assume all duties, functions, responsibilities, records, equipment, and staff of the Governor's Commission on Sports, Physical Activity, and Wellness established under KRS 11.190, and establish a council titled the Council on Sports, Physical Activity, and Wellness to implement these transferred statutory responsibilities.

➔Section 25. KRS 148.795 is amended to read as follows:

- (1) As used in this section:
  - (a) "Agreement" means a recreational land use agreement where at least one (1) party is a governmental entity as defined in this section;
  - (b) "Government" or "governmental entities" means any government entity of the Commonwealth, including state government agency, city, county, urban-county government, consolidated local government, unified local government, or charter county;
  - (c) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery when attached to the realty;
  - (d) "Owner" means a private individual, corporation, or government who possesses a fee interest in the land; and
  - (e) "Recreational purpose" includes but is not limited to any of the following, or any combination thereof: hunting, fishing, rock climbing, swimming, boating, camping, picnicking, hiking, bicycling, horseback riding, pleasure driving, nature study, waterskiing, winter sports, all-terrain vehicle riding, and viewing or enjoying historical, archaeological, scenic, or scientific sites.
- (2) The Kentucky Recreational Trails Authority is hereby established and attached to the Office of the Secretary, **Tourism, Arts and Heritage**~~Commerce~~ Cabinet, for the purpose of planning and implementing programs to expand tourism opportunities for off-road activities that are pertinent to nonmotorized and motorized vehicle use, including but not limited to pedestrians, bicycles, mountain bicycles, horses, all-terrain vehicles (ATVs), and off-highway vehicles (OHVs), on designated lands in Kentucky. Membership of the authority shall consist of the following:
  - (a) A chairman, selected from its members, to be designated by the Governor;
  - (b) Membership shall include the following members:
    - 1. Two (2) representatives of the Kentucky Motorcycle Association, to be appointed by the Governor from a list of five (5) nominees selected by the association. The initial term of one (1) member shall expire one (1) year after the date of appointment. The initial term of the other member shall expire two (2) years after the date of appointment;
    - 2. One (1) member of the League of Kentucky Sportsmen, appointed by the Governor. The initial term of this member shall expire one (1) year after the date of appointment;
    - 3. One (1) member of the Kentucky Council of Area Development Districts, appointed by the Governor. The initial term of this member shall expire four (4) years after the date of appointment;
    - 4. Two (2) members selected from ATV associations, with consideration given to geographic diversity. The initial term of one (1) of these members shall expire two (2) years after the date of appointment, and the initial term of the other member shall expire three (3) years after the date of appointment;
    - 5. Two (2) members representing Kentucky Farm Bureau, with consideration to the eastern and western parts of the state. The initial term of one (1) member shall expire two (2) years after the date of appointment, and the initial term of the other member shall expire four (4) years after the date of appointment; and

6. Two (2) members representing the coal industry, with consideration to the eastern and western parts of the state. The initial term of one (1) member shall expire two (2) years after the date of appointment, and the initial term of the other member shall expire four (4) years after the date of appointment;
- (c) Seven (7) additional members who shall be appointed by the Governor from the following groups:
1. One (1) member shall be chosen from a Kentucky bicycling organization that is affiliated with either the League of American Bicyclists, the United States Cycling Federation, or the International Mountain Bicycling Association. The initial term of this member shall expire three (3) years after the date of appointment;
  2. One (1) member shall be from a Kentucky equine organization that has trail riding as its primary focus. The initial term of this member shall expire one (1) year after the date of appointment;
  3. One (1) member shall be chosen from a state or national hiking or backpacking organization. The initial term of this member shall expire two (2) years after the date of appointment;
  4. Two (2) members shall be chosen from five (5) persons nominated in writing by the Kentucky Horse Council. The initial term of one (1) of these members shall expire four (4) years after the date of appointment, and the initial term of the other member shall expire two (2) years after the date of the appointment;
  5. One (1) member shall be chosen by the Governor from the public at large. The initial term of this member shall expire three (3) years after the date of appointment; and
  6. One (1) member shall be selected from among the county judges/executive of the Commonwealth. The initial term of this member shall expire two (2) years after the date of appointment;
- (d) Additionally, the following shall serve as members by virtue of their official positions:
1. The secretary of the Transportation Cabinet, or the secretary's designee;
  2. The secretary of the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet, or the secretary's designee;
  3. The commissioner of the Department of Fish and Wildlife Resources, or the commissioner's designee;
  4. The secretary of the Justice and Public Safety Cabinet, or the secretary's designee;
  5. The secretary of the Environmental and Public Protection Cabinet, or the secretary's designee; and
  6. The Commissioner of the Department of Agriculture, or the Commissioner's designee; and
- (e) Upon the expiration of the terms of the initial members described in paragraphs (b) and (c) of this subsection, the Governor shall appoint thirteen (13) members of the public in such a manner as to ensure equal representation of motorized and nonmotorized use of trails and in accordance with the requirements of paragraphs (b) and (c) of this subsection. Any vacancy on the authority shall be filled by the Governor for the unexpired term.
- (3) (a) Each appointed member shall serve for a term of four (4) years. Sitting members shall be eligible to succeed themselves.
- (b) Any member may be removed from his or her appointment by the Governor for cause.
- (c) Appointed members shall be reimbursed for travel costs incurred in attending meetings, which shall be paid from the funds of the **Kentucky** Department of **Travel**~~Tourism~~ and in compliance with the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet's procedures for travel and reimbursement.
- (4) (a) The chairman shall set the agenda, place, and time of meetings, which shall be held a minimum of two (2) times per year and conducted in accordance with the Open Meetings Act, KRS 61.805 to 61.850.
- (b) A quorum for all meetings shall consist of seven (7) of the members.

- (c) The chairman shall be a nonvoting member, except in cases of a tie vote, in which case, the chairman may cast the deciding vote.
- (5) (a) An agreement as defined in subsection (1) of this section may be entered into by any owner or owners and any governmental entities as defined in subsection (1)(b) of this section.
- (b) The agreement shall be a contractual arrangement that authorizes the public to utilize the owner's land for a recreational purpose. The allowable recreational purpose or purposes may include but are not limited to all-terrain vehicle riding, public hunting, nature conservation, biking, rock climbing, hiking, and horseback trail riding and may be limited in scope by the terms of the agreement.
- (c) The agreement may specify that the governmental entity or entities may be responsible for the maintenance and upkeep of the land.
- (d) The provisions of KRS 411.190 shall apply to public use of lands for recreational purposes authorized under an agreement entered into pursuant to this section.
- (e) Unless otherwise agreed by the parties, the agreement may be terminated by either party at any time for any reason if thirty (30) days' notice is given.
- (6) An agreement executed pursuant to this section, or the use of land under an agreement created pursuant to this section, shall not:
  - (a) Create in any user any interest in the property;
  - (b) Ripen into a claim of adverse possession;
  - (c) Alter the land or status of the land to make it unsuitable for mining pursuant to KRS 350.610; or
  - (d) Cause a denial of a mining permit pursuant to KRS 350.085 or other statutes or regulations of the Commonwealth of Kentucky or any political subdivision thereof.
- (7) In accordance with the purpose and limitations specified in this section, the governmental entities may:
  - (a) Construct, develop, manage, maintain, operate, improve, renovate, finance, or otherwise provide for recreational activities and facilities on designated public lands and private lands where owners have voluntarily entered into use agreements with the authority or government; and
  - (b) Charge for a general use permit to access the lands for off-road activities as described in subsection (5) of this section that shall be valid for not less than thirty (30) days.
- (8) The Kentucky Recreational Trails Authority may accept, acquire, dispose of, or hold real or personal property, and any interest therein, by deed, grant, loan, gift, devise, bequest, lease, license, easement, or transfer from any state or federal government agency, or from any person, corporation, or other entity, for the purpose of public use.
- (9) All proceeds derived from the sale of a general use permit pursuant to subsection (7)(b) of this section, or any proceeds derived from property identified in subsection (8) of this section, shall be paid to the State Treasurer, who shall deposit the proceeds in a revolving fund to carry out the purposes of this chapter. The fund shall be administered by the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet. Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this section.
- (10) The **Tourism, Arts and Heritage**~~Commerce~~ Cabinet may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A in order to carry out the provisions of this section.

➔Section 26. KRS 148.850 is amended to read as follows:

- (1) The Tourism Development Finance Authority is created within the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet. The authority shall consist of seven (7) members appointed by the Governor. The members of the authority shall serve without compensation but shall be entitled to reimbursement for their necessary expenses incurred in performing their duties. Of the members initially appointed to the authority, two (2) members shall be appointed for terms of one (1) year, three (3) members shall be appointed for terms of two (2) years, and two (2) members shall be appointed for terms of three (3) years. Thereafter, the members of the authority shall be appointed for terms of four (4) years.

- (2) The Governor shall appoint one (1) member as chairperson of the Tourism Development Finance Authority. The members of the authority may elect other officers as they deem necessary.
- (3) No member of the Tourism Development Finance Authority shall either directly or indirectly be a party to, or be in any manner interested in, any contract or agreement with the authority for any matter, cause, or thing that creates any liability or indebtedness against the authority.
- (4) The Tourism Development Finance Authority shall have the powers necessary to carry out the purposes of this section, KRS 139.536, KRS 148.851 to 148.860, and the Tourism Development Loan Program created by 2000 Ky. Acts ch. 549, Part IX, Section 47, including, but not limited to, the power to:
  - (a) Make and condition all loans from the Tourism Development Loan Program;
  - (b) Employ fiscal consultants, attorneys, appraisers, and other agents on behalf of the authority whom the authority deems necessary or convenient for the preparation and administration of agreements and documents necessary or incidental to any project. The fees for the services provided by persons employed on behalf of the authority shall be paid by the beneficiary of a loan under this program directly to the person providing consultation, advisory, legal, or other services; and
  - (c) Impose and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payment of fees and charges.

➔Section 27. KRS 148.851 is amended to read as follows:

As used in KRS 139.536 and KRS 148.851 to 148.860, unless the context clearly indicates otherwise:

- (1) "Agreement" means a tourism attraction agreement entered into, pursuant to KRS 148.859, on behalf of the authority and an approved company, with respect to a tourism attraction project;
- (2) "Approved company" means any eligible company approved by the secretary of the *Tourism, Arts and Heritage*~~Commerce~~ Cabinet and the authority pursuant to KRS 148.859 that is seeking to undertake a tourism attraction project;
- (3) "Approved costs" means:
  - (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of a tourism attraction project;
  - (b) The costs of acquiring real property or rights in real property and any costs incidental thereto;
  - (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a tourism attraction project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;
  - (d) All costs of architectural and engineering services, including but not limited to: estimates, plans and specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a tourism attraction project;
  - (e) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a tourism attraction project;
  - (f) All costs required for the installation of utilities, including but not limited to: water, sewer, sewer treatment, gas, electricity and communications, and including off-site construction of the facilities paid for by the approved company; and
  - (g) All other costs comparable with those described in this subsection, excluding costs subject to refund under KRS 154.20-202, 154.20-204, 154.20-206, 154.20-208, and 154.20-210;
- (4) "Authority" means the Kentucky Tourism Development Finance Authority as set forth in KRS 148.850;
- (5) "Crafts and products center" means a facility primarily devoted to the display, promotion, and sale of Kentucky products, and at which a minimum of eighty percent (80%) of the sales occurring at the facility are of Kentucky arts, crafts, or agricultural products;
- (6) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity operating or intending to operate a tourism attraction project,

whether owned or leased, within the Commonwealth that meets the standards promulgated by the secretary of the *Tourism, Arts and Heritage* ~~Commerce~~ Cabinet pursuant to KRS 148.855. An eligible company may operate or intend to operate directly or indirectly through a lessee;

- (7) "Entertainment destination center" means a facility containing a minimum of two hundred thousand (200,000) square feet of building space adjacent or complementary to an existing tourism attraction, an approved tourism attraction project, or a major convention facility, and which provides a variety of entertainment and leisure options that contain at least one (1) major themed restaurant and at least three (3) additional entertainment venues, including but not limited to live entertainment, multiplex theaters, large format theaters, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions, or other cultural and leisure time activities. Entertainment and food and drink options shall occupy a minimum of sixty percent (60%) of total gross area available for lease, and other retail stores shall occupy no more than forty percent (40%) of the total gross area available for lease;
- (8) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under KRS 139.536 and KRS 148.851 to 148.860;
- (9) "Inducements" means the Kentucky sales tax refund as prescribed in KRS 139.536;
- (10) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements of KRS 139.536 and KRS 148.851 to 148.860;
- (11) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state that is not an independent municipal corporation or political subdivision;
- (12) "Theme restaurant destination attraction" means a restaurant facility that:
  - (a) Has construction, equipment, and furnishing costs in excess of five million dollars (\$5,000,000);
  - (b) Has an annual average of not less than fifty percent (50%) of guests who are not residents of the Commonwealth;
  - (c) Is in operation and open to the public no less than three hundred (300) days per year and for no less than eight (8) hours per day;
  - (d) Has food and nonalcoholic drink options that constitute a minimum of fifty percent (50%) of total gross sales receipts; and
  - (e)
    1. Has seating capacity of four hundred fifty (450) guests and offers live music or live musical and theatrical entertainment during the peak business hours that the facility is in operation and open to the public;
    2. Within three (3) years of the completion date pursuant to KRS 148.859(1)(b), holds a top two (2) tier rating by a nationally accredited service; or
    3. Offers a unique dining experience that is not available in the Commonwealth within a one hundred (100) mile radius of the attraction;
- (13) "Tourism attraction" means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomenon or scenic beauty, a Kentucky crafts and products center, a theme restaurant destination attraction, or an entertainment destination center.
  - (a) A tourism attraction may include lodging facilities if:
    1. The facilities constitute a portion of a tourism attraction project and represent less than fifty percent (50%) of the total approved cost of the tourism attraction project, or the facilities are to be located on recreational property owned or leased by the Commonwealth or federal government and the facilities have received prior approval from the appropriate state or federal agency;
    2. The facilities involve the restoration or rehabilitation of a structure that is listed individually in the National Register of Historic Places or are located in a National Register Historic District and certified by the Kentucky Heritage Council as contributing to the historic significance of the

district, and the rehabilitation or restoration project has been approved in advance by the Kentucky Heritage Council;

3. The facilities involve the reconstruction, restoration, rehabilitation, or upgrade of a full-service lodging facility having not less than five hundred (500) guest rooms, with reconstruction, restoration, rehabilitation, or upgrade costs exceeding ten million dollars (\$10,000,000);
  4. The facilities involve the construction, restoration, rehabilitation, or upgrade of a full-service lodging facility which is or will be an integral part of a major convention or sports facility, with construction, restoration, rehabilitation, or upgrade costs exceeding six million dollars (\$6,000,000); or
  5. The facilities involve the construction, restoration, rehabilitation, or upgrade of a lodging facility which is or will be located:
    - a. In the Commonwealth within a fifty (50) mile radius of a property listed on the National Register of Historic Places with a current function of recreation and culture; and
    - b. Within any of the one hundred (100) least populated counties in the Commonwealth, in terms of population density, according to the most recent census;
- (b) A tourism attraction shall not include the following:
1. Facilities that are primarily devoted to the retail sale of goods, other than an entertainment destination center, a theme restaurant destination attraction, a Kentucky crafts and products center, or a tourism attraction where the sale of goods is a secondary and subordinate component of the attraction; and
  2. Recreational facilities that do not serve as a likely destination where individuals who are not residents of the Commonwealth would remain overnight in commercial lodging at or near the tourism attraction project; and

- (14) "Tourism attraction project" or "project" means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten (10) years, construction, and equipping of a tourism attraction; the construction, and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction, including but not limited to surveys; installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that shall allow the approved company to attract persons.

➔Section 28. KRS 148.855 is amended to read as follows:

- (1) The secretary of the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet shall establish standards for the making of applications for inducements and the recommendation to the authority of eligible companies and their tourism attraction projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A.
- (2) The secretary of the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet shall consult with the authority when establishing standards to ensure that standards established pursuant to subsection (1) of this section and KRS 148.857(1) do not conflict.
- (3) With respect to each eligible company making an application to the secretary of the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet for inducements, and with respect to the tourism attraction project described in the application, the secretary of the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet shall make inquiries and request materials of the applicant that shall include, but not be limited to, marketing plans for the project that target individuals who are not residents of the Commonwealth; a description and location of the project; capital and other anticipated expenditures for the project that indicate that the total cost of the project shall exceed one million dollars (\$1,000,000), except for a theme restaurant destination attraction's project cost, which shall exceed five million dollars (\$5,000,000), and the anticipated sources of funding therefor; the anticipated employment and wages to be paid at the project; business plans which indicate the average number of days in a year in which the project will be in operation and open to the public; and the anticipated revenues and expenses generated by the project. If the tourism attraction project is an entertainment destination center, the sales tax refund shall be dedicated to a public infrastructure purpose that shall relate to the tourism attraction project and

shall be approved by the secretary of the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet. The applicant shall submit the public infrastructure purpose with its application. Based upon a review of these materials, if the secretary of the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet determines that the eligible company and the tourism attraction project may reasonably satisfy the criteria for final approval in subsection (4) of this section, then the secretary of the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet may submit a written request to the authority requesting that the authority consider a preliminary approval of the eligible company and the tourism attraction project.

- (4) After receiving a preliminary approval by the authority, the secretary of the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet shall engage the services of a competent consulting firm to analyze the data made available by the eligible company and to collect and analyze additional information necessary to determine that, in the independent judgment of the consultant, the tourism attraction project:
  - (a) Shall attract at least twenty-five percent (25%) of its visitors from among persons who are not residents of the Commonwealth, except for a theme restaurant destination attraction, which shall attract a minimum of fifty percent (50%) of its visitors from among persons who are not residents of the Commonwealth;
  - (b) Shall have costs in excess of one million dollars (\$1,000,000), except for a theme restaurant destination attraction, which shall have costs in excess of five million dollars (\$5,000,000);
  - (c) Shall have a significant and positive economic impact on the Commonwealth considering, among other factors, the extent to which the tourism attraction project will compete directly with existing tourism attractions in the Commonwealth and the amount by which increased tax revenues from the tourism attraction project will exceed the credit given to the approved company;
  - (d) Shall produce sufficient revenues and public demand to be operating and open to the public for a minimum of one hundred (100) days per year, except for a theme restaurant destination attraction, which shall be operating and open to the public for a minimum of three hundred (300) days per year; and
  - (e) Shall not adversely affect existing employment in the Commonwealth.
- (5) The independent consulting firm shall consult with the authority, the Office of the State Budget Director and the Finance and Administration Cabinet in the development of a report on the proposed tourism attraction project. The Office of the State Budget Director and the Finance and Administration Cabinet shall agree as to the methodology to be used and assumptions to be made by the independent consultant in preparing its report. On the basis of the independent consultant's report and prior to any approval of a project by the authority, the Office of the State Budget Director and the Finance and Administration Cabinet shall certify to the authority whether there is a projected net positive economic impact to the Commonwealth and the expected amount of incremental state revenues from the project. Approval shall not be granted if it is determined that there is no projected net positive economic impact to the Commonwealth.
- (6) The eligible company shall pay for the cost of the consultant's report and shall cooperate with the consultant and provide all of the data that the consultant deems necessary to make its determination under subsection (4) of this section.
- (7) After a review of relevant materials, the consultant's report, and completion of other inquiries, the secretary of the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet shall, by written notification to the authority, provide a recommendation to the authority regarding final approval of the tourism attraction project.

➔Section 29. KRS 148.857 is amended to read as follows:

- (1) The authority shall establish standards for preliminary approval and final approval of eligible companies and their projects by the promulgation of administrative regulations in accordance with KRS Chapter 13A.
- (2) The authority shall consult with the secretary of the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet when establishing standards to ensure that standards established pursuant to KRS 148.855(1) and subsection (1) of this section do not conflict.
- (3) At the written request of the secretary of the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet, the authority may, by resolution, give its preliminary approval by designating an eligible company as a preliminarily approved company and preliminarily authorizing the undertaking of the tourism attraction project.

- (4) After the adoption of the authority's preliminary approval, an agent designated by the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet shall hold at least one (1) public hearing to solicit public comments regarding the designation of an eligible company as a preliminarily approved company and the preliminary authorization for the undertaking of a tourism attraction project. Notice of the public hearing shall be given in accordance with KRS Chapter 424.
- (5) The authority shall review the report of the consultant prepared pursuant to KRS 148.855(4), the recommendation of the secretary of the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet, the report prepared by the agent documenting all comments, both written and oral, received at the public hearing required by subsection (4) of this section, and other information that has been made available to the authority in order to assist the authority in determining whether the tourism attraction project will further the purposes of KRS 139.536 and KRS 148.851 to 148.860.
- (6) The criteria for final approval of eligible companies and tourism attraction projects shall include, but not be limited to, the criteria set forth in KRS 148.855(4).
- (7) After a review of the consultant's report, the recommendation of the secretary of the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet and other information made available to the authority, the authority, by resolution, may give its final approval to the eligible company's application for a tourism attraction project and may grant to the eligible company the status of an approved company. The decision reached by the authority shall be final and no appeal shall be granted.
- (8) All meetings of the authority shall be held in accordance with KRS 61.805 to 61.850. The authority may, pursuant to KRS 61.815, hold closed sessions of its meetings to discuss matters exempt from the open meetings law and pertaining to an eligible company.

➔Section 30. KRS 148.872 is amended to read as follows:

As used in KRS 148.870 to 148.892, unless the context otherwise requires:

- (1) "Department" means the Kentucky Department of Parks within the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet;
- (2) "Person" means an individual, trust, firm, estate, joint stock company, corporation, nonprofit corporation, government corporation, limited liability company, partnership, association, organization, government unit or agency whether federal, state, city, commission, or other political subdivision of the Commonwealth, any interstate body, group of persons acting in concert, or other legal entity;
- (3) "Secretary" means the secretary of the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet of the Commonwealth of Kentucky; and
- (4) "Trail" means the Pine Mountain Trail State Park, as established in KRS 148.870.

➔Section 31. KRS 148.880 is amended to read as follows:

A fund for the purpose of carrying out the provisions of KRS 148.870 to 148.892 is hereby created, to be designated as the Pine Mountain Trail fund, and shall consist of all revenues derived from privileges, concessions, contracts, or otherwise, and all moneys received by gifts, contributions, donations, and grants from public or private sources. This shall be a trust and agency fund account maintained and disbursed by the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet to carry out the purposes of KRS 148.870 to 148.892, after appropriations are made for administration and other expenses and purposes provided in KRS 148.870 to 148.892. It shall not lapse, and interest earnings shall accrue to the fund.

➔Section 32. KRS 150.091 is amended to read as follows:

- (1) In addition to the powers accorded under KRS 150.090, any conservation officer appointed under this chapter may enforce the provisions of KRS 148.795 and 148.796.
- (2) Any program of enforcement for KRS 148.795 and 148.796 shall be through a memorandum of agreement between the department and the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet. The department may, after entering into a memorandum of agreement with the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet, promulgate administrative regulations in accordance with KRS Chapter 13A to carry out the enforcement of KRS 148.795 and 148.796.

➔Section 33. KRS 153.180 is amended to read as follows:

- (1) There is hereby established a nonprofit foundation to be known as the Kentucky Foundation for the Arts. The purpose of the foundation shall be to enhance the stability of Kentucky's arts organizations and to ensure Kentuckians have access to the arts through the support of an endowment fund.
- (2) Funding for the foundation shall be obtained through state appropriations, gifts, grants, and any other funds from the public and private sectors. The foundation board shall have the authority to solicit, accept, and receive contributions from the public and private sectors to match public funding. Moneys in the foundation fund shall not lapse to the general fund at the end of the fiscal year. Moneys in the foundation fund shall be invested by the Office of Financial Management established in KRS 42.0201 consistent with the provisions of KRS Chapter 42, and interest income earned shall be credited to the foundation fund. The foundation board may use the investment income for the purpose of awarding matching grants to nonprofit arts organizations to carry out the following programs:
  - (a) The Performing Arts and Visual Arts Touring Subsidy Program shall support tours and exhibitions for the education and enjoyment of audiences throughout the state.
  - (b) The Institutional Stabilization Program shall provide operating funds to achieve short-term or long-term stability of arts organizations.
- (3) The foundation shall be governed by a board of trustees consisting of six (6) members appointed by the Governor on recommendations from the Kentucky Arts Council. For the initial appointments, the Governor shall appoint two (2) members to serve two (2) year terms; two (2) members to serve three (3) year terms; and two (2) members to serve four (4) year terms. Thereafter, the Governor shall make all appointments for a term of four (4) years. The board shall elect by majority vote a chair and other officers deemed necessary. Board members shall not receive any compensation for their services, but may be reimbursed in accordance with the provisions of KRS 44.070 and 45.101 for actual and necessary expenses incurred in the performance of their duties.
- (4) The foundation board shall perform duties and responsibilities deemed necessary to fulfill the purposes of this section. The foundation board shall establish by administrative regulation procedures for administration of the foundation, eligibility criteria for the award of grants, appropriate matching contributions from grant recipients, and evaluation and reporting requirements.
- (5) The foundation shall be attached to the office of the secretary of the *Tourism, Arts and Heritage* ~~Commerce~~ Cabinet for administrative purposes only. The Kentucky Arts Council shall provide to the foundation by agreement staff support and office facilities for which reasonable charges and fees may be levied against the foundation fund.
- (6) The foundation board shall submit an annual report to the Governor and the Legislative Research Commission listing the sources of funds acquired and expended.

➔Section 34. KRS 153.215 is amended to read as follows:

- (1) There is established the Kentucky Arts Council (hereinafter referred to as "the council") which shall perform functions pursuant to KRS 153.210 to 153.235.
- (2) The purpose of the council shall be to develop and promote a broadly conceived state policy of support for the arts in Kentucky pursuant to KRS 153.210 to 153.235.
- (3) The membership of the council shall consist of not more than sixteen (16) members who have an interest in the arts. On July 1, 1972, the Governor shall appoint not more than four (4) members for a term of one (1) year; not more than four (4) members for a term of two (2) years; not more than four (4) members for a term of three (3) years; and not more than four (4) members for a term of four (4) years. Thereafter the Governor shall make all appointments for a term of four (4) years, except that of the members appointed after July 15, 1998, four (4) members appointed to fill the terms expiring July 1, 1999, shall serve until February 1, 2000; four (4) members appointed to fill the terms expiring July 1, 2000, shall serve until February 1, 2001; four (4) members appointed to fill the terms expiring July 1, 2001, shall serve until February 1, 2002; and members appointed to fill the terms expiring July 1, 2002, shall serve until February 1, 2003; and subsequent appointments shall be for four (4) year terms ending on February 1.
- (4) Council members shall not receive any compensation for their services, but may be reimbursed in accordance with the provisions of KRS Chapters 44 and 45 for actual and necessary expenses incurred in the performance of their duties under KRS 153.210 to 153.235.

- (5) From the council membership the Governor shall appoint a chairman and a vice chairman of the council. The council may elect by majority vote other officers deemed necessary.
- (6) The council shall meet at the call of the chairman, but not less often than twice during each calendar year. A majority of the members appointed to the council shall constitute a quorum.
- (7) The council shall be attached to the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet as an independent administrative body.
- (8) The council shall be headed by an executive director appointed by the secretary of the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet upon recommendation of the council.

➔Section 35. KRS 153.220 is amended to read as follows:

The duties and functions of the arts council shall be to:

- (1) Stimulate and encourage throughout the state the study and presentation of the arts, and foster public interest and participation therein;
- (2) Encourage public interest in the cultural heritage of our state and expand the state's cultural resources;
- (3) Encourage and assist freedom of artistic expression essential for the well-being of the arts;
- (4) Serve as the sole agency in the Commonwealth for administration of a state arts plan developed in coordination with the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet;
- (5) Establish standards and procedures and advisory committees as necessary to advise the Governor on the selection of the Kentucky poet laureate or writer laureate;
- (6) Advise the Governor on matters pertaining to the arts;
- (7) Adopt and promulgate regulations for the performance of its duties and functions provided in KRS 153.210 to 153.235;
- (8) Receive federal grants, and other money and property of any nature whatsoever which may be given, donated, conveyed, bequeathed, devised, or otherwise transferred, without condition or restriction, except that provided by law, other than that it be used for some purpose of the council as permitted by KRS 153.210 to 153.235;
- (9) Contract from time to time, as appropriate, with experts and consultants who may be utilized as deemed necessary, and make other necessary purchases and expenditures, all in accordance with the state plan approved by the secretary of the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet and with the state purchasing provisions of KRS Chapters 45 and 45A;
- (10) Hold public and private hearings for the purpose of furthering the objectives of the council's programs; and
- (11) Make and sign any agreements, subject to the provisions of KRS Chapters 45 and 45A, and do and perform any acts that may be necessary to carry out the purposes of KRS 153.210 to 153.235.

➔Section 36. KRS 153.410 is amended to read as follows:

- (1) The Kentucky Center for the Arts Corporation is hereby established, and shall consist of fifteen (15) members representing metropolitan Louisville and Kentucky to be appointed by the Governor, who shall also designate a chairman. Initial terms shall be staggered; thereafter, members shall be appointed to four (4) year terms.
- (2) Members may be removed by the Governor only for cause after being afforded notice, a hearing with counsel before the Governor or his designee, and a finding of fact by the Governor. A copy of charges, transcript of the record of the hearings, and findings of fact shall be filed with the Secretary of State.
- (3) The Kentucky Center for the Arts Corporation shall be a body corporate with full corporate powers. A quorum of the corporation shall consist of eight (8) members, with a majority of members present authorized to act upon any matter legally before the corporation. Full minutes and records shall be kept of all meetings of the corporation and all official actions shall be recorded.
- (4) The corporation may enact bylaws concerning the election of other officers, the creation of an executive committee with full authority to act between regular meetings, and the designation of alternates for members with full voting authority.
- (5) The corporation shall be attached to the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet for administrative purposes.

➔Section 37. KRS 153.620 is amended to read as follows:

- (1) April 24 of each year is declared to be "Kentucky Writers' Day."
- (2) The *Tourism, Arts and Heritage*~~[Commerce]~~ Cabinet may plan and direct a yearly event on April 24 honoring Kentucky writers. These plans may include designing programs for schools and civic or business organizations.

➔Section 38. KRS 154.10-010 is amended to read as follows:

- (1)
  - (a) The Kentucky Economic Development Partnership, a board governing the Cabinet for Economic Development, is created and established, performing essential governmental and public functions and purposes essential to improving and promoting the health and general welfare of the people of the Commonwealth through sustainable economic development, as prescribed in KRS 154.01-020.
  - (b) The board shall have reorganization powers and authority as prescribed in KRS 12.028 and shall constitute an administrative body as defined in KRS 12.010, but it and the cabinet shall not be subject to the reorganization by the Governor, KRS Chapter 12 notwithstanding.
  - (c) The board shall serve as the governing body of the cabinet and shall exercise all powers and authorities conferred upon it by statute, including, but not limited to, the following functions:
    1. Strategic planning;
    2. Finance;
    3. Business assistance;
    4. Marketing and promotion;
    5. Community development;
    6. Workforce development;
    7. Innovation; and
    8. All economic development powers and authorities not specifically conferred by statute to another agency or authority of state government.
- (2) The board shall consist of eleven (11) voting members and two (2) nonvoting members. The eleven (11) voting members shall consist of the Governor, the secretary of the Finance and Administration Cabinet, the secretary of the Environmental and Public Protection Cabinet, and eight (8) private sector members who shall be appointed by the Governor. The secretary of the Governor's Executive Cabinet shall serve as a voting member upon the absence of the Governor. The secretary of the Cabinet for Economic Development and the secretary of the *Tourism, Arts and Heritage*~~[Commerce]~~ Cabinet shall serve as nonvoting members.
- (3) By no later than thirty (30) days after July 14, 1992, the governing bodies of each of the following organizations shall meet and nominate two (2) persons from each of the six (6) Congressional districts of the Commonwealth and two (2) persons from the state at large, as candidates for the initial appointment as private sector members to the board:
  - (a) The Kentucky Industrial Development Council;
  - (b) The Associated Industries of Kentucky;
  - (c) The Kentucky State AFL-CIO;
  - (d) The Kentucky Farm Bureau Federation;
  - (e) The Kentucky Chamber of Commerce; and
  - (f) The Kentucky Economic Development Corporation.
- (4) The Governor shall select the original eight (8) private sector members from the aggregation of the lists provided pursuant to subsection (3) with at least one (1) appointment being chosen from each organization's list and at least one (1) appointment being chosen from each Congressional district. After the initial appointments, appointments to vacancies shall be made in the same manner as prescribed in subsection (3) of this section, except that there is no requirement that the vacancy be filled from the same organization's list as the original appointment.

- (5) The terms of office of the initial appointments of the private sector members to the board shall be staggered so that one-fourth (1/4) of all appointments shall expire one (1), two (2), three (3), and four (4) years, respectively, from the date of their appointment. All succeeding appointments shall be for four (4) years.
- (6) In making appointments to the board, the Governor shall assure broad geographical representation, as well as representation from the major sectors of Kentucky's economy by leading executives with a knowledge of the problems of large and small businesses, local economic development, and the transfer of research and development from the laboratory to the marketplace. In filling vacancies, the Governor shall attempt to assure the continuing representation on the board of broad constituencies of Kentucky's economy, including manufacturing and agriculture.
- (7) Vacancies on the board which may occur from time to time shall be filled as follows:
  - (a) Any vacancy which occurs shall be filled for the unexpired term in accordance with the procedures established for the original appointment.
  - (b) If any private sector member misses more than two (2) consecutive meetings of the board, then that position shall be declared vacant and filled in accordance with this section.
- (8) The board shall meet quarterly and at other times upon call of the chairman or a majority of the board.
- (9) A quorum shall be a majority of the voting membership of the board.
- (10) A quorum shall be required to organize and conduct the business of the board, except that an affirmative vote of seven (7) or more members of the entire board shall be required to fire the cabinet's secretary, and to adopt or amend the strategic plan.
- (11) Private sector members shall serve without compensation but shall be reimbursed for all reasonable, necessary, and actual expenses.
- (12) All existing duties, responsibilities, functions, personnel, programs, funds, obligations, records, and real and personal property of the Cabinet for Economic Development, as of July 14, 1992, shall be under the authority and control of the board.

➔Section 39. KRS 154.33-603 is amended to read as follows:

- (1) The corporation shall be governed by a board of directors consisting of seven (7) voting members and three (3) ex officio members as follows:
  - (a) Three (3) members representing the three (3) county governments, one (1) to be appointed by the county judge/executive of Knott County, one (1) to be appointed by the county judge/executive of Letcher County, and one (1) to be appointed by the county judge/executive of Perry County;
  - (b) Three (3) members appointed by the Governor, one (1) each from Knott, Letcher, and Perry Counties;
  - (c) The secretary of the Finance and Administration Cabinet, or his or her designee, as a voting member;
  - (d) The secretary of the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet, or his or her designee, as an ex officio, nonvoting member;
  - (e) The secretary of the Cabinet for Economic Development, or his or her designee, as an ex officio, nonvoting member; and
  - (f) The commissioner of the Governor's Office for Local Development, or his or her designee, as an ex officio, nonvoting member.
- (2) Appointed members shall serve staggered terms of four (4) years beginning August 1, 2000, except that of the initial appointments:
  - (a) One (1) member appointed by the Governor and the member appointed by the county judge/executive of Knott County shall each serve a term of four (4) years;
  - (b) One (1) member appointed by the Governor and the member appointed by the county judge/executive of Letcher County shall each serve a term of three (3) years;
  - (c) The one (1) member appointed by the county judge/executive of Perry County shall serve a term of two (2) years; and
  - (d) One (1) member appointed by the Governor shall serve a term of one (1) year.

- (3) A member may be removed by the appointing authority only for neglect of duty, misfeasance, or malfeasance and after being afforded an opportunity for a hearing in accordance with KRS Chapter 13B.
- (4) Members of the board shall serve without compensation but shall be reimbursed for actual and necessary travel expenses incurred in the performance of their duties. The reimbursement shall be in accordance with administrative regulations promulgated under KRS Chapter 13A by the Finance and Administration Cabinet.

➔Section 40. KRS 154.40-020 is amended to read as follows:

- (1) The Eastern Kentucky Exposition Center Corporation is created and established as an independent, de jure municipal corporation and political subdivision of the Commonwealth that shall be a public body corporate and politic. The corporation shall develop, operate, and manage the Eastern Kentucky Exposition Center funded by 2000 Ky. Acts ch. 549, Part II, Section F, Item 1(e) and Part II, Section S, Item 2(a)236. The corporation shall be attached to the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet for administrative purposes.
- (2) The corporation shall be a participating agency in the Kentucky Employees Retirement System. Its employees shall be considered state employees for the purpose of participating in the Kentucky Employees Retirement System and shall be entitled to the requirements and benefits provided to other system participants.

➔Section 41. KRS 154.47-050 is amended to read as follows:

The Kentucky Wood Products Competitiveness Corporation shall work in cooperation with the Kentucky Department of Parks of the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet to:

- (1) Develop and design Kentucky-made furniture for use in state parks;
- (2) Make state parks facilities living showrooms for Kentucky furniture and other wood products; and
- (3) Establish retail showrooms where Kentucky-made furniture and other wood products can be displayed for sale to, or order by, park visitors.

➔Section 42. KRS 154.90-010 is amended to read as follows:

- (1) The Northern Kentucky Convention Center Corporation is hereby established to develop and manage the Northern Kentucky Convention Center. The corporation shall be attached to the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet for administrative purposes. The corporation shall be directed by a board consisting of seven (7) members appointed as follows:
  - (a) The county judge/executives of Kenton, Campbell and Boone Counties, with the approval of their respective fiscal courts, shall each appoint one (1) member to the board. An appointee under this subsection shall have demonstrated successful business experience in a field related to the convention business;
  - (b) The mayor of the city within which the convention center is located shall appoint one (1) member, with the approval of the city commission; and
  - (c) The Governor shall appoint three (3) members.
  - (d) One (1) of the initial appointees of the Governor shall have a one (1) year term, one (1) shall have a two (2) year term, and one (1) shall have a three (3) year term. All other appointments, and all subsequent appointments by the Governor, shall be for four (4) year terms.
  - (e) Members may be removed by the appointing authority only for cause and after being afforded notice, a hearing, and a finding of fact by the appointing authority. A copy of charges, transcript of the record of the hearings, and findings of fact shall be filed with the Secretary of State.
- (2) The Northern Kentucky Convention Center Corporation shall be a body corporate with full corporate powers. A quorum of the corporation shall consist of four (4) members, with a majority of members present authorized to act upon any matter legally before the corporation. Minutes and records shall be kept of all meetings of the corporation and all official actions shall be recorded.
- (3) The corporation may enact bylaws concerning the election of officers and other administrative procedures it deems necessary.

➔Section 43. KRS 171.312 is amended to read as follows:

In order to better facilitate the operation and management, the Kentucky Historical Society shall be organized into four (4) separate divisions. These divisions shall include: Research and Publications; Oral History and Educational Outreach; Administration; and Museums. The divisions shall be headed by a director appointed by the Executive Committee of the Kentucky Historical Society of the *Tourism, Arts and Heritage*~~Commerce~~ Cabinet pursuant to KRS 171.311.

➔Section 44. KRS 171.347 is amended to read as follows:

There is created the Commonwealth of Kentucky Abraham Lincoln Bicentennial Commission, which shall be attached to the Kentucky Historical Society for administrative purposes. The commission shall be composed of twenty (20) members, as follows:

- (1) Two (2) members of the House of Representatives, appointed by the Speaker of the House;
- (2) Two (2) members of the Senate, appointed by the President of the Senate;
- (3) The secretary of the Education Cabinet, or his or her designee;
- (4) One (1) member from the *Tourism, Arts and Heritage*~~Commerce~~ Cabinet, appointed by the secretary of that cabinet;
- (5) One (1) member from the Kentucky Historical Society, appointed by the director of that agency;
- (6) One (1) member from the Kentucky Heritage Council, appointed by the executive director of that agency;
- (7) One (1) member from the Kentucky African-American Heritage Commission, appointed by the head of that agency;
- (8) One (1) member from the Kentucky Humanities Council, appointed by the executive director of that agency;
- (9) One (1) member from the Abraham Lincoln Bicentennial Commission established by the United States Congress, appointed by the concurrence of the chairs of that agency;
- (10) The Larue County judge/executive, or his or her designee;
- (11) One (1) member from the Abraham Lincoln Birthplace, appointed by the superintendent of that national historic site;
- (12) One (1) member from the Lincoln Museum in Hodgenville, appointed by the president of that agency;
- (13) One (1) member from the Mary Todd Lincoln House in Lexington, appointed by the head of that agency;
- (14) One (1) member from the Farmington Historic Home museum in Louisville, appointed by the head of that agency; and
- (15) Four (4) citizen members from the state at large with a demonstrated interest in history and substantial knowledge and appreciation of Abraham Lincoln, appointed by the Governor.

The chair of the commission shall be elected from among the membership by the commission members.

➔Section 45. KRS 171.3801 is amended to read as follows:

- (1) There is established the Kentucky Heritage Council (hereinafter referred to as "the council") which shall perform the functions specified in KRS 171.381.
- (2) The membership of the council shall consist of not more than sixteen (16) members who have an interest in the preservation and protection of Kentucky's heritage. On or before September 15, 1982, the Governor shall appoint not more than four (4) members for a term of one (1) year, not more than four (4) members for a term of two (2) years, not more than four (4) members for a term of three (3) years, and not more than four (4) members for a term of four (4) years. Thereafter, the Governor shall make all appointments for a term of four (4) years.
- (3) Council members shall receive no compensation for their services but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.
- (4) From the council membership the Governor shall appoint a chairman and a vice chairman of the council. The council may elect by majority vote other officers deemed necessary.
- (5) The council shall meet at the call of the chairman, but not less often than twice during each calendar year. A majority of the members appointed to the council shall constitute a quorum.

- (6) The council shall be attached to the *Tourism, Arts and Heritage*~~[Commerce]~~ Cabinet for administrative purposes.
- (7) The Heritage Council shall include a heritage division, whose duties shall include providing staff services needed by the Heritage Council in order to perform its duties under KRS 171.381, including but not limited to preserving and protecting buildings, sites and other landmarks associated with the archaeological, cultural, economic, military, national, political and social aspects of Kentucky's history.
- (8) The heritage division shall be headed by a director appointed by the Governor from a list of three (3) nominees submitted by the Heritage Council; and the Heritage Council and the heritage division shall not be subject to reorganization.

➔Section 46. KRS 171.381 is amended to read as follows:

- (1) The Kentucky Heritage Council shall be dedicated to the preservation and protection of all meaningful vestiges of Kentucky's heritage for succeeding generations, and in pursuit of this dedication it shall engage in and concern itself with worthy projects and other matters related to the conservation and continuing recognition of buildings, structures, sites, and other landmarks associated with the archaeological, cultural, economic, military, natural, political, or social aspects of Kentucky's history.
- (2) The duties and functions of the council shall be to:
  - (a) Review and recommend appropriate projects and programs to insure the proper recognition, preservation, and protection of matters related to Kentucky's heritage, particularly those in the nature of or associated with real property;
  - (b) Advise, consult, and cooperate generally with state, local, and national officials and agencies to accomplish the purposes to which the council is dedicated, and specifically with the Kentucky Department of Parks and Historical Society in matters of common concern;
  - (c) Encourage, promote, and coordinate historic preservation programs being conducted in Kentucky by other agencies or groups, public and private;
  - (d) Prepare and maintain an inventory or survey of Kentucky's resource of historic buildings, sites, structures, and other landmarks, and list in an official roll those landmarks which possess statewide or national significance; and
  - (e) Conduct a survey and maintain a catalog of Kentucky's historic drylaid and historic mortared rock fences as defined in KRS 171.391.
- (3) The council may:
  - (a) Accept grants or other funds or property from any available source, public or private;
  - (b) Employ, with the approval of the Governor, staff as may be necessary. Any member of the staff shall be entitled to compensation under KRS Chapter 18A, and may be reimbursed for necessary and actual expenses in accordance with the provisions of KRS Chapters 44 and 45;
  - (c) Enter into contractual relationships as may be necessary;
  - (d) Acquire real property, by gift or devise or by purchase pursuant to the provisions of KRS 45A.045, and hold the same in the name of the Commonwealth for the use and benefit of the council;
  - (e) Initiate its own projects of an appropriate nature, and undertake or otherwise engage in joint projects with other agencies or groups, public or private; and
  - (f) Adopt rules and regulations as may be necessary and incidental to the performance of the council's duties and functions.
- (4) The receipt, control, and expenditure of funds shall be subject to the general provisions of the Kentucky Revised Statutes governing financial administration of all state agencies.
- (5) No provision of this section shall be construed as repealing any of the laws of the Commonwealth relating to the preservation, protection, and recognition of historical matters, but shall be held and construed as ancillary and supplemental thereto.

- (6) The council shall receive applications, interview and recommend to the Governor three (3) persons as nominees for appointment as the director of the Heritage Division, **Tourism, Arts and Heritage**~~Commerce~~ Cabinet. The director of the Heritage Division shall be the state historic preservation officer.
- (7) The responsibilities of the state historic preservation officer shall include:
- (a) Development for the State Historic Preservation Program;
  - (b) Direction of a comprehensive statewide survey of historic properties;
  - (c) Nomination of historic properties to the National Register of Historic Places;
  - (d) Cooperation in the development of effective working relationships with federal, state, and local agencies that participate in the management of historic properties and in project planning that may affect historic properties;
  - (e) Cooperation in the integration of historic preservation planning with all levels of planning;
  - (f) Cooperation in the development and maintenance of a review procedure for publicly funded, assisted, and licensed undertakings that may affect historic properties within the state;
  - (g) Participation in the review of federal, federally assisted, and federally licensed undertakings that may affect historic properties included in or eligible for inclusion in the National Register under Section 106 of the National Historic Preservation Act and Executive Order 11593;
  - (h) Assisting federal agencies in fulfilling their historic preservation responsibilities under federal law and regulations;
  - (i) Liaison with organizations of professional archaeologists, historians, architects, architectural historians, planners, and others concerned with historic preservation;
  - (j) Development and operation of a program of public information and education concerning the preservation program;
  - (k) Administration of the grants program within the state;
  - (l) Preparation and maintenance of a comprehensive statewide historic preservation plan; and
  - (m) The immediate transmittal to the Department of Parks and to the Commonwealth's Railtrail Development Office in the Governor's Office for Local Development of any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

➔Section 47. KRS 171.800 is amended to read as follows:

- (1) The Kentucky African-American Heritage Commission is hereby established to perform the functions specified in KRS 171.805.
- (2) The membership of the commission shall consist of three (3) ex officio members and seventeen (17) members who derive from geographically diverse areas of the state and who represent various heritage interests as follows:
  - (a) The secretary of the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet, or the secretary's designee to serve ex officio;
  - (b) The president of Kentucky State University, or the president's designee to serve ex officio;
  - (c) The director of the Kentucky Heritage Council, or the director's designee to serve ex officio;
  - (d) Four (4) members from institutions of higher education;
  - (e) One (1) member from the preservation community;
  - (f) One (1) member from the arts community; and
  - (g) Eleven (11) members from the public-at-large.
- (3) Appointed members shall be appointed by the Governor and shall serve for terms of four (4) years. Any vacancies shall be filled by appointment of the Governor for the remainder of the unexpired term.

- (4) Commission members shall receive no compensation for their services but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.
- (5) From the commission membership, the Governor shall appoint a chairman and a vice chairman of the commission. The commission may elect by majority vote other officers deemed necessary.
- (6) The commission shall meet at the call of the chairman, but not less often than three times during each calendar year. A majority of the members appointed to the commission shall constitute a quorum.
- (7) The commission shall be attached to the Kentucky Heritage Council for administrative purposes.
- (8) The commission may accept grants or raise funds from any available source, public or private, to accomplish its duties and responsibilities. Committees may be formed at the discretion of the chairman.
- (9) The African-American Heritage Program is established as a branch within the Kentucky Heritage Division, whose responsibilities shall include providing staff services needed to perform its duties under KRS 171.805.

➔Section 48. KRS 171.805 is amended to read as follows:

- (1) The Kentucky African-American Heritage Commission shall be dedicated to the preservation and protection of all meaningful vestiges of Kentucky's African-American heritage.
- (2) The duties and functions of the commission shall be to:
  - (a) Advise the secretary of the ***Tourism, Arts and Heritage***~~*Commerce*~~ Cabinet and agencies within the cabinet on matters relating to African-American heritage;
  - (b) Encourage other public and private agencies within the areas of the arts, the humanities, and the sciences to incorporate the African-American influence when developing programs on the history and heritage of Kentucky;
  - (c) Represent a network of groups and individuals interested or involved in promoting awareness of African-American heritage in Kentucky;
  - (d) Advocate the preservation, conservation, and interpretation of significant buildings, sites, neighborhoods, documents, artifacts, and lifeways that represent and embody African-American heritage;
  - (e) Recognize and sanction projects which advance wider knowledge of African-Americans' impact on life in Kentucky; and
  - (f) Coordinate an initiative to protect, preserve, and promote the history of the Underground Railroad in Kentucky, in accordance with KRS 171.812.

➔Section 49. KRS 171.812 is amended to read as follows:

The commission shall coordinate Kentucky's Underground Railroad initiative in accordance with KRS 171.805. The commission's duties as they relate to this initiative shall include but not be limited to the following:

- (1) Undertake a comprehensive statewide inventory of historic sites related to the Underground Railroad, and implement a master plan for site protection and development;
- (2) Encourage and assist the state preservation officer within the Kentucky Heritage Council to nominate significant historical sites of the Kentucky Underground Railroad to the national and state registers of historic places;
- (3) Develop and operate, in conjunction with the ***Tourism, Arts and Heritage***~~*Commerce*~~ Cabinet, a program of public information, education, and promotion of the history of the Underground Railroad in Kentucky, to include but not be limited to implementing and maintaining a Web site connected to the ***Tourism, Arts and Heritage***~~*Commerce*~~ Cabinet;
- (4) Coordinate with local, state, and federal authorities in project planning that may affect Underground Railroad sites in Kentucky and neighboring states;
- (5) Consider the council's recommendations and, contingent on review by the council, present to the secretary of the ***Tourism, Arts and Heritage***~~*Commerce*~~ Cabinet an annual report and plan for future action; and

(6) Pursue public and private funds to carry out the duties set forth in this section.

➔Section 50. KRS 171.814 is amended to read as follows:

An Underground Railroad Advisory Council shall be established within the commission.

- (1) The council shall consist of thirteen (13) members, as follows:
  - (a) Secretary of the Education Cabinet, or designee;
  - (b) Secretary of the *Tourism, Arts and Heritage*~~[Commerce]~~ Cabinet, or designee;
  - (c) Secretary of the Transportation Cabinet, or designee;
  - (d) Director of the Kentucky Historical Society, or designee;
  - (e) State historic preservation officer of the Kentucky Heritage Council, or designee;
  - (f) Chair of the commission or designee;
  - (g) Director of the Underground Railroad Institute at Georgetown College, or designee;
  - (h) Two (2) members of the General Assembly who hold an interest in the Underground Railroad, one (1) appointed by the President of the Senate and one (1) appointed by the Speaker of the House of Representatives;
  - (i) Two (2) at-large representatives who hold an interest in the protection, preservation, and promotion of the history of the Underground Railroad in Kentucky, appointed by the Governor;
  - (j) One (1) member of the board or staff of the National Underground Railroad Freedom Center who resides within a county of the Northern Kentucky Area Development District; and
  - (k) One (1) member of the board or staff of the National Underground Railroad Museum who resides within a county of the Buffalo Trace Area Development District.
- (2) The duties of the council shall be to:
  - (a) Advise and assist the commission with respect to issues and opportunities related to the Underground Railroad; and
  - (b) Annually review and make recommendations to the commission on the annual report and plan for future action.
- (3) Members of the council shall be appointed for four (4) year terms, except that initial appointments for the two (2) at-large members shall be made so that one (1) member is appointed for two (2) years, and one (1) member is appointed for three (3) years. Sitting members shall be eligible for reappointment.
- (4) The chair of the commission shall serve as chair of the council.
- (5) The council shall meet annually or more frequently at the request of the chair.
- (6) Six (6) members shall constitute a quorum for conducting business.
- (7) In the event of a vacancy, the appropriate appointing entity shall appoint a replacement member who shall hold office during the remainder of the term so vacated.
- (8) Members of the council shall serve without compensation.

➔Section 51. KRS 171.816 is amended to read as follows:

The *Tourism, Arts and Heritage*~~[Commerce]~~ Cabinet shall be charged with the purpose of protecting, preserving, and promoting the history of the Underground Railroad in Kentucky in accordance with KRS 171.805 and 171.810 to 171.814. The secretary of the *Tourism, Arts and Heritage*~~[Commerce]~~ Cabinet shall receive an annual report from the Kentucky African-American Heritage Commission in accordance with KRS 171.812(5), and shall review and submit the annual report to the Governor and the Legislative Research Commission for distribution to the appropriate committees.

➔Section 52. KRS 171.822 is amended to read as follows:

The duties of the Kentucky Native American Heritage Commission shall be to:

- (1) Advise the ***Tourism, Arts and Heritage***~~{Commerce}~~ Cabinet, the Kentucky Heritage Council, and the Kentucky General Assembly on matters relating to Native American heritage;
- (2) Encourage other public and private agencies within the areas of the arts, humanities, and sciences to incorporate the Native American influence when developing programs on the history and heritage of Kentucky;
- (3) Represent a network of groups and individuals interested, or actively involved, in promoting awareness of Native American heritage in Kentucky;
- (4) Support the preservation, conservation, and interpretation of significant buildings, sites, structures, documents, artifacts, and lifestyles that represent and embody Native American heritage; and
- (5) Recognize and sanction projects that advance wider knowledge of Native Americans' contributions to, and influence and impact on, life in Kentucky.

➔Section 53. KRS 176.500 is amended to read as follows:

- (1) The Mississippi River Parkway Commission of Kentucky is hereby established to serve as the local coordinating agency for the development of the Great River Road along the Mississippi River from Canada to the Gulf of Mexico. The commission shall be attached to the Office of the Secretary of the ***Tourism, Arts and Heritage***~~{Commerce}~~ Cabinet for administrative purposes.
- (2) The commission shall consist of the following ten (10) members: Four (4) citizen members, appointed by the Governor, and consisting of one (1) member from each of the four (4) counties that border the Mississippi River, who shall serve a term of four (4) years and may serve until a successor is appointed. Four (4) members shall be the respective county judges/executive of Ballard, Carlisle, Fulton, and Hickman Counties in Kentucky. Other members shall be the secretary of the ***Tourism, Arts and Heritage***~~{Commerce}~~ Cabinet or his designee; and the secretary of the Transportation Cabinet, or his designee. The commission shall annually elect a chairman and shall meet quarterly or upon call of the chairman with ten (10) days' written notice. Six (6) members present shall constitute a quorum for the official conduct of business. The commission may enter into contracts with the Purchase Area Development District to provide administrative services.
- (3) Members shall receive no compensation but shall be reimbursed according to state regulations for actual and necessary expenses incurred in conducting commission business.
- (4) The commission shall assure that the proper direction is taken in developing a corridor of scenic, historical, and archaeological significance through the Kentucky counties of Ballard, Carlisle, Hickman, and Fulton.

➔Section 54. KRS 177.107 is amended to read as follows:

The Transportation and Tourism Interagency Committee is established to foster close collaboration between the ***Tourism, Arts and Heritage***~~{Commerce}~~ Cabinet and the Transportation Cabinet on policies that affect the tourism industry and to place strong emphasis on the coordination of mutual interests such as highway signage, scenic byways, highway safety, and concern for the Commonwealth's beauty and heritage.

➔Section 55. KRS 177.108 is amended to read as follows:

- (1) The Transportation and Tourism Interagency Committee shall be composed of thirteen (13) members or their official appointed designees, as follows:
  - (a) Six (6) members appointed by the secretary of the ***Tourism, Arts and Heritage***~~{Commerce}~~ Cabinet;
  - (b) Six (6) members appointed by the secretary of the Transportation Cabinet; and
  - (c) One (1) member appointed by the executive director of the Kentucky Heritage Council.
- (2) Committee members shall receive no compensation for their services, but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with the performance of their duties and functions as committee members.
- (3) The committee shall elect its chair and vice chair from representatives of the ***Tourism, Arts and Heritage***~~{Commerce}~~ and Transportation Cabinets for a term of one (1) year. The vice chair shall succeed the chair. The chair shall alternately be a representative of the ***Tourism, Arts and Heritage***~~{Commerce}~~ and Transportation Cabinets.

- (4) The committee shall meet upon the call of the chair and upon the request of the secretary of the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet or the secretary of the Transportation Cabinet.
- (5) A committee member may appoint a proxy for an individual meeting, delegating to the proxy the privilege of voting on any issue. The proxy appointment shall be in writing.

➔Section 56. KRS 177.109 is amended to read as follows:

The Transportation and Tourism Interagency Committee shall have but not be limited to the following duties and responsibilities:

- (1) Review Kentucky's signage laws, administrative regulations, and policies implementing the federal "Manual on Uniform Traffic Control Devices" and submit any proposed revisions to the secretary of the Transportation Cabinet;
- (2) Seek public comment on Kentucky's signage laws, administrative regulations, and policies;
- (3) Advise the Transportation Cabinet on the scenic byways and highways program;
- (4) Review and make recommendations on requests for highway signage from tourism-related entities;
- (5) Coordinate development of the tourism information potential of welcome centers and rest areas through such means as interactive videos, information kiosks, and highway advisory radio transmitters, as well as other innovative methods which may be identified by the committee;
- (6) Monitor developments across the United States relating to billboards and official signs;
- (7) Report to the secretary of the Transportation Cabinet and to the secretary of the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet on issues of mutual interest to the cabinets;
- (8) Serve as an advisory committee on issues identified by the secretary of the Transportation Cabinet and secretary of the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet; and
- (9) Report committee recommendations to the secretary of the Transportation Cabinet, the secretary of the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet, the secretary of the Education Cabinet, and the secretary of the Executive Cabinet.

➔Section 57. KRS 177.573 is amended to read as follows:

The Transportation Cabinet, in coordination with the ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet and the Kentucky Heritage Council, shall promulgate administrative regulations under KRS Chapter 13A to establish:

- (1) Specific criteria for a road to be designated a scenic byway or a scenic highway;
- (2) A process for nominating and review of a road as a scenic byway or scenic highway;
- (3) A process for designating a road as a scenic byway or scenic highway; and
- (4) A process to remove the scenic designation from a byway or highway if the intrinsic qualities of the road change or if the community affected by the road requests the scenic designation to be removed.

➔Section 58. KRS 230.225 is amended to read as follows:

- (1) The Kentucky Horse Racing Authority is created as an independent agency of state government to regulate the conduct of horse racing and pari-mutuel wagering on horse racing, and related activities within the Commonwealth of Kentucky. The authority shall be attached to the Environmental and Public Protection Cabinet for administrative purposes.
- (2) The Kentucky Horse Racing Authority shall consist of thirteen (13) members appointed by the Governor, with the secretaries of the Environmental and Public Protection Cabinet, ***Tourism, Arts and Heritage***~~Commerce~~ Cabinet, and Economic Development Cabinet serving as ex officio, nonvoting members. Two (2) members shall have no financial interest in the business or industry regulated. The members of the authority shall be appointed to serve for a term of three (3) years except, of the members initially appointed, four (4) shall serve for a term of three (3) years, five (5) shall serve for a term of two (2) years, and four (4) shall serve for a term of one (1) year. Any member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the remainder of the unexpired term. In making appointments, the Governor may consider members broadly representative of the thoroughbred industry and members broadly representative of the standardbred, quarter horse, Appaloosa, or Arabian industries. The Governor may also consider

recommendations from the Kentucky Thoroughbred Owners and Breeders, Inc., the Kentucky Division of the Horsemen's Benevolent and Protective Association, the Kentucky Harness Horsemen's Association, and other interested organizations.

- (3) Members of the authority shall receive fifty dollars (\$50) per day for each meeting attended and shall be reimbursed for all expenses paid or incurred in the discharge of official business. The Governor shall appoint one (1) member of the authority to serve as its chairperson who shall serve at the pleasure of the Governor. The Governor shall further designate a second member to serve as vice chair with authority to act in the absence of the chairperson. Before entering upon the discharge of their duties, all members of the Kentucky Horse Racing Authority shall take the constitutional oath of office.
- (4) The authority shall establish and maintain a general office for the transaction of its business and may in its discretion establish a branch office or offices. The authority may hold meetings at any of its offices or at any other place when the convenience of the authority requires. All meetings of the authority shall be open and public, and all persons shall be permitted to attend meetings. A majority of the authority shall constitute a quorum for the transaction of its business or exercise of any of its powers.
- (5) The duly promulgated administrative regulations of the Kentucky Horse Racing Authority, in effect as of January 6, 2004, shall remain in effect as the initial regulations of the Kentucky Horse Racing Authority until revoked or modified by the authority.
- (6) All licenses approved by, and dates awarded by, the Kentucky Horse Racing Authority shall remain in effect through December 31, 2004.
- (7) Except as otherwise provided, the authority shall be responsible for the following:
  - (a) Developing programs and procedures for oversight and regulation of horse racing matters, including but not limited to race day medications;
  - (b) Recommending tax incentives and other options to promote the strength and growth of the thoroughbred industry and to preserve the economic viability of Kentucky's horse farms;
  - (c) Designing and implementing programs that strengthen the ties between Kentucky's horse industry and the state's universities, with the goal of increasing the horse industry's impact on the state's economy;
  - (d) Developing and supporting programs which ensure that Kentucky remains a national leader in equine research; and
  - (e) Developing and implementing programs that promote Kentucky's horse and tourism industry.

➔Section 59. KRS 235.010 is amended to read as follows:

As used in this chapter, unless the context clearly requires a different meaning:

- (1) "Vessel" means every description of watercraft, other than a seaplane on the water;
- (2) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, except for the following:
  - (a) Boats or vessels propelled totally by a direct current battery-powered motor when used on private waters;
  - (b) Boats propelled by human power employing the use of hand or foot operation; and
  - (c) Federally regulated commercial vessels;
- (3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;
- (4) "Personal watercraft" means a vessel which uses an internal combustion engine to power a jet pump for its primary source of propulsion and is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than to be operated by a person sitting or standing inside the vessel;

- (5) "Safe boating certificate" means a document attesting the successful completion of instruction, approved by the department or given by the United States Coast Guard or Coast Guard Auxiliary or the United States Power Squadron, to prepare an individual to safely operate a motorboat or personal watercraft on the waters of the Commonwealth;
- (6) "Waters of this state" means any waters within the territorial limits of this state;
- (7) "Person" means an individual, partnership, firm, corporation, association, or other entity;
- (8) "Operate" means to navigate or otherwise use a motorboat or a vessel;
- (9) "Cabinet" means the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet;
- (10) "Department" means the Department of Fish and Wildlife Resources;
- (11) "License" and "certificate of number" as used herein are synonymous;
- (12) "Clerk" means county clerk;
- (13) "Division of Law Enforcement" means the Division of Law Enforcement, Department of Fish and Wildlife Resources within the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet;
- (14) "Title" means the certificate of title;
- (15) "Commissioner" means the commissioner of the Department of Fish and Wildlife Resources;
- (16) "Federally regulated commercial vessel" means any vessel holding a United States certificate of documentation with a coastwise trade endorsement;
- (17) "Marina" means a dock or basin providing moorings for motorboats and offering supply, repair, or other services for remuneration; and
- (18) "Marine sanitation device" means equipment that is identified by the United States Coast Guard as meeting the standards of the United States Environmental Protection Agency or that is approved by the Environmental and Public Protection Cabinet, to eliminate the discharge of untreated sewage from vessels into the waters of the Commonwealth and is a device that receives, treats, retains, or discharges sewage.

➔Section 60. KRS 235.010 is amended to read as follows:

As used in this chapter, unless the context clearly requires a different meaning:

- (1) "Vessel" means every description of watercraft, other than a seaplane on the water;
- (2) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, except for the following:
  - (a) Boats or vessels propelled totally by a direct current battery-powered motor when used on private waters;
  - (b) Boats propelled by human power employing the use of hand or foot operation; and
  - (c) Federally regulated commercial vessels;
- (3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;
- (4) "Personal watercraft" means a vessel which uses an internal combustion engine to power a jet pump for its primary source of propulsion and is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than to be operated by a person sitting or standing inside the vessel;
- (5) "Safe boating certificate" means a document attesting the successful completion of instruction, approved by the department or given by the United States Coast Guard or Coast Guard Auxiliary or the United States Power Squadron, to prepare an individual to safely operate a motorboat or personal watercraft on the waters of the Commonwealth;
- (6) "Waters of this state" means any waters within the territorial limits of this state;
- (7) "Person" means an individual, partnership, firm, corporation, association, or other entity;

- (8) "Operate" means to navigate or otherwise use a motorboat or a vessel;
- (9) "Cabinet" means the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet;
- (10) "Department" means the Department of Fish and Wildlife Resources;
- (11) "License" and "certificate of number" as used herein are synonymous;
- (12) "Clerk" means county clerk;
- (13) "Division of Law Enforcement" means the Division of Law Enforcement, Department of Fish and Wildlife Resources within the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet;
- (14) "Title" means the certificate of title;
- (15) "Commissioner" means the commissioner of the Department of Fish and Wildlife Resources;
- (16) "Federally regulated commercial vessel" means any vessel holding a United States certificate of documentation with a coastwise trade endorsement;
- (17) "Marina" means a dock or basin providing moorings for motorboats and offering supply, repair, or other services for remuneration; and
- (18) "Marine sanitation device" means equipment that is identified by the United States Coast Guard as meeting the standards of the United States Environmental Protection Agency or that is approved by the Environmental and Public Protection Cabinet, to eliminate the discharge of untreated sewage from vessels into the waters of the Commonwealth and is a device that receives, treats, retains, or discharges sewage.

➔Section 61. KRS 235.030 is amended to read as follows:

This chapter shall be known as the State Boating Act and shall be administered by the Department of Fish and Wildlife Resources in the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet, except the Transportation Cabinet shall be responsible for administering the boat numbering, registration, and titling requirements.

➔Section 62. KRS 235.130 is amended to read as follows:

- (1) No person acting for himself or another shall buy or trade for any motorboat without receiving the certificate of title issued for that boat with a certificate of transfer endorsed thereon. If the motorboat has not been issued a certificate of title as noted on the certificate of registration, the person shall receive a completed assignment of title on a boat transaction record and the certificate of registration.
- (2) It shall be the duty of the purchaser to promptly submit the endorsed certificate of title or boat transaction record and certificate of registration to the county clerk of the county of the purchaser's residence or in which the motorboat is to be principally operated. The purchaser shall apply for a new certificate of title and registration pursuant to KRS 235.050. The county clerk shall thereupon issue to the purchaser a transfer of registration bearing the same data and information. The clerk shall forward the endorsed certificate of title or boat transaction record and certificate of registration and new application for title and registration to the Transportation Cabinet. Except when registration is prohibited by law, any unexpired registration shall remain valid after transfer until expiration occurs according to law.
- (3) For transferring the registration, the clerk shall collect a fee of five dollars (\$5). The clerk shall retain two dollars (\$2), the Transportation Cabinet shall receive two dollars (\$2) and the Department of Fish and Wildlife Resources within the *Tourism, Arts and Heritage*~~{Commerce}~~ Cabinet shall receive one dollar (\$1). The fee received by the Transportation Cabinet shall be deposited in a trust and agency account for use by the Transportation Cabinet in defraying the cost of implementing and operating the boat titling and registration program. The fee for transferring the title shall be as required by KRS 235.085.
- (4) If a transferee does not promptly submit the necessary documents to the county clerk as required by law in order to complete the transfer transaction, a transferor may submit to the county clerk, after the passage of fifteen (15) calendar days, in his county of residence, an affidavit that he has transferred his interest in a specific motorboat and the clerk may enter appropriate data into the AVIS system which would restrict any registration transaction from occurring on that vehicle until the transfer was processed.

- (5) If the owner junks or otherwise renders a motorboat unfit for future use, he shall deliver the title to the county clerk of the county in which the motorboat is junked. The county clerk shall immediately return the title to the Transportation Cabinet. The owner shall pay to the county clerk fifty cents (\$0.50) for his services.

➔Section 63. KRS 247.800 is amended to read as follows:

The Department of Agriculture, in conjunction with the *Tourism, Arts and Heritage*~~Commerce~~ Cabinet, shall create an interagency Office of Agritourism to be housed in the Division of Agritourism within the Office for Agricultural Marketing and Product Promotion in the Department of Agriculture. As used in KRS 247.800 to 247.810, agritourism means the act of visiting a working-farm or any agricultural, horticultural, or agribusiness operation for the purpose of enjoyment, education, or active involvement in the activities of the farm or operation. It shall be the purpose of the Office of Agritourism to:

- (1) Promote agritourism in Kentucky to potential visitors, both national and international; and
- (2) Assist in sustaining the viability and growth of the agritourism industry in Kentucky.

➔Section 64. KRS 247.802 is amended to read as follows:

The Office of Agritourism shall perform all duties necessary to carry out the purposes of KRS 247.800 to 247.810, including but not limited to:

- (1) Within the first year of its creation, developing a statewide master plan for implementation of KRS 247.800 and this section. The Office of Agritourism shall report on the plan to the Agritourism Advisory Council at the request of the council;
- (2) Developing a unified Kentucky agritourism marketing strategy between the Department of Agriculture and the *Tourism, Arts and Heritage*~~Commerce~~ Cabinet to promote Kentucky agritourism. The strategy shall include but not be limited to promotion of Kentucky agritourism through the creation of an agritourism Web site and advertisement through various media outlets;
- (3) Coordinating efforts to educate the general public about the importance of Kentucky's agricultural heritage and industry;
- (4) Developing regional agritourism development plans for each of the nine (9) tourism regions as follows:
  - (a) Bluegrass;
  - (b) Cave;
  - (c) Green River;
  - (d) Eastern Highlands-North;
  - (e) Eastern Highlands-South;
  - (f) Louisville-Lincoln;
  - (g) Northern Kentucky;
  - (h) Southern Lakes and Rivers; and
  - (i) Western Lakes and Rivers;
- (5) Providing support, education, and resource materials for all interested persons, to include but not be limited to existing Kentucky agritourism businesses, displaced tobacco farmers and others engaged in agribusiness within the state, and other Kentuckians with the intent of developing an agritourism business. The agritourism office shall provide this assistance in the following areas, to include but not be limited to:
  - (a) Agritourism opportunities, networks, product development, and entrepreneurship;
  - (b) Agritourism funding opportunities, including but not limited to grants, loans, and partnerships; and
  - (c) Insurance and infrastructure concerns of the agritourism industry;
- (6) Working and partnering with federal, state, and local organizations to carry out the purposes of KRS 247.800 to 247.810;
- (7) Reporting to the Agritourism Advisory Council, as created in KRS 247.804, annually or at the request of the chair, and in accordance with subsection (1) of this section; and

- (8) Considering the recommendations of the Agritourism Advisory Council, in accordance with KRS 247.806(2).

➔Section 65. KRS 247.804 is amended to read as follows:

An Agritourism Advisory Council shall be established within the Department of Agriculture to advise and assist the Office of Agritourism. The Agritourism Advisory Council shall be composed of:

- (1) One (1) representative from each of the following entities:
  - (a) Department of Agriculture, appointed by the Commissioner of Agriculture;
  - (b) **Tourism, Arts and Heritage**~~Commerce~~ Cabinet, appointed by the secretary of the cabinet;
  - (c) Education Cabinet, appointed by the secretary of the cabinet;
  - (d) Department of Fish and Wildlife Resources Commission, appointed by the commissioner of the department;
  - (e) University of Kentucky Cooperative Extension Service;
  - (f) Kentucky Tourism Council;
  - (g) Kentucky Farm Bureau;
  - (h) Kentucky Association of Fairs and Horse Shows;
  - (i) Southern and Eastern Kentucky Tourism Development Association;
  - (j) Licking River Valley Resource Conservation and Development Council;
  - (k) Buffalo Trace Covered Bridge Authority;
  - (l) Kentucky Chamber of Commerce;
  - (m) Kentucky Council of Area Development Districts; and
  - (n) Jackson Purchase Resource Conservation and Development Foundation, Inc.;
- (2) The Governor, or a designee;
- (3) Two (2) members of the General Assembly who hold an interest in agriculture, one (1) appointed by the President of the Senate and one (1) appointed by the Speaker of the House of Representatives; and
- (4) Nine (9) representatives of agriculture or the agritourism industry, appointed by the Commissioner of Agriculture from a list of candidates compiled by the tourism regions as set forth in KRS 247.802(4). Each tourism region shall submit three (3) candidates with a business interest in agritourism who reside within that region, and the Commissioner shall appoint one (1) candidate from each region from those names submitted.

➔Section 66. KRS 247.810 is amended to read as follows:

The Commissioner of Agriculture and the secretary of the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A, as necessary to implement the provisions of KRS 247.800 to 247.810.

➔Section 67. KRS 260.165 is amended to read as follows:

- (1) The Kentucky Grape and Wine Council is hereby created within the Department of Agriculture. The purpose of the council shall be to promote and facilitate the development of a Kentucky-based grape industry in the Commonwealth of Kentucky.
- (2) The council shall be composed of the Commissioner of Agriculture, or his designee, and nine (9) members appointed by the Governor. Of the nine (9) gubernatorial appointments, the Governor shall appoint one (1) from a list of three (3) candidates submitted by the director of the University of Kentucky Agriculture Experiment Station, one (1) from a list of three (3) candidates submitted by the secretary of the **Tourism, Arts and Heritage**~~Commerce~~ Cabinet, three (3) winery operators from a list of six (6) candidates submitted by the Commissioner of Agriculture, two (2) grape producers from a list of four (4) candidates submitted by the Commissioner of Agriculture, and two (2) citizens at large.

- (3) Of the members appointed after January 1, 2007, three (3) members shall serve a term of one (1) year, two (2) shall serve a term of two (2) years, two (2) shall serve a term of three (3) years, and two (2) shall serve a term of four (4) years, as the Governor designates. Thereafter, appointed members shall serve terms of four (4) years and until their successors are appointed and qualify. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term.
- (4) The council shall select a chairman and shall meet at least once every three (3) months at the times and places the chairman designates. Six (6) members present at any meeting shall constitute a quorum. Upon the written request of any five (5) members, the chairman shall call a meeting of the council at the time and place requested.
- (5) The council may enact bylaws concerning the conduct of the council's business and other administrative procedures as the council deems necessary.
- (6) Members shall receive no compensation but shall be reimbursed, payable from the Kentucky Grape and Wine Council fund, for any actual travel expense incurred while attending meetings of the council.

➔Section 68. KRS 260.175 is amended to read as follows:

- (1) The Kentucky small farm wineries support fund is created as a separate revolving fund. The support fund shall consist of amounts transferred to the fund pursuant to the provisions of subsection (2) of this section and any other proceeds from grants, contributions, appropriations, or other moneys made available for the purposes of the fund. Fund amounts not expended at the close of the fiscal year shall not lapse but shall be carried forward into the next fiscal year. Any interest earnings of the fund shall become a part of the fund and shall not lapse.
- (2) A total of four hundred thousand dollars (\$400,000) shall be deposited in the Kentucky small farm wineries support fund each fiscal year from the general fund. The funds shall be used by the Kentucky Grape and Wine Council as follows:
  - (a) Two hundred thousand dollars (\$200,000) of these funds shall be used for the promotion, advertising, and marketing in Kentucky of wine produced by small farm wineries located in Kentucky. The Grape and Wine Council shall collaborate with the Kentucky Department of Agriculture and the Kentucky Department of ~~Travel~~~~Tourism~~ to develop a marketing plan that shall include brand development, direct mail and e-marketing, Web site development, collateral brochures and maps, advertising, familiarization trips, a retail program, and any other topics that the marketing plan developers deem appropriate or that may be established through the promulgation of administrative regulations;
  - (b) One hundred thousand dollars (\$100,000) of these funds shall be used by the Grape and Wine Council, in collaboration with the Kentucky Department of Agriculture and the Kentucky Department of ~~Travel~~~~Tourism~~, to establish a local marketing cost-share program. For the purposes of this section, "local marketing cost-share program" means a mechanism to provide Kentucky small farm wineries with access to matching funds reimbursements for projects that promote and market their products. Standards for the application for, and receipt of, matching funds reimbursements authorized in this section shall be established through the promulgation of administrative regulations;
  - (c) Twenty-five thousand dollars (\$25,000) of these funds shall be used for funding the administrative costs of the Kentucky Grape and Wine Council. The costs shall include but not be limited to reimbursement for the council's appointed members' travel expenses while attending meetings of the council;
  - (d) Seventy-five thousand dollars (\$75,000) shall be used for the payment of fees to licensed wholesalers who apply to the Kentucky Grape and Wine Council to participate in a wine distribution program established by the Kentucky Grape and Wine Council. A licensed wholesaler shall apply and shall be eligible for consideration for the program. The licensed wholesaler shall agree to distribute the wine produced by small farm wineries licensed under KRS 243.155 and shall agree to sell the wine to retailers for the same price the wholesaler paid for the wine; and
  - (e) The funds allocated to each purpose under paragraphs (a) to (d) of this subsection shall be used exclusively for the purpose designated. Use of the funds designated for each purpose shall be strictly adhered to, and the funds shall not be used to support any other purpose. If at the end of any fiscal year funds designated for one (1) of the purposes are unused, the unused funds shall not lapse and shall be carried forth to the succeeding year for the original purpose designated.
- (3) The Kentucky Grape and Wine Council shall advise the Commissioner of the Department of Agriculture regarding promulgation of administrative regulations necessary to carry out the provisions and purposes of

subsection (2) of this section. The Department of Agriculture shall collaborate with the *Kentucky* Department of ~~Travel~~~~Tourism~~ and the Kentucky Grape and Wine Council in developing any administrative regulations promulgated under the authority of this section.

➔Section 69. KRS 353.752 is amended to read as follows:

- (1) There is created and established within the Finance and Administration Cabinet a Kentucky Gas Pipeline Authority composed of the following nine (9) members:
  - (a) The secretary of the Finance and Administration Cabinet or his or her designee;
  - (b) The secretary of the *Tourism, Arts and Heritage*~~Commerce~~ Cabinet or his or her designee;
  - (c) The secretary of the Environmental and Public Protection Cabinet or his or her designee;
  - (d) A member designated by the Kentucky Oil and Gas Association;
  - (e) A member designated by the Kentucky Society of Professional Engineers who shall have experience in oil and gas pipeline construction;
  - (f) A member designated by the Kentucky Gas Association representing a natural gas distribution company with a minimum annual throughput of ten billion (10,000,000,000) cubic feet;
  - (g) A citizen member appointed by the Governor; and
  - (h) Two (2) nonvoting legislator members, one (1) appointed by the President of the Senate and one (1) by the Speaker of the House of Representatives.
- (2) Members described in paragraphs (d), (e), (f), and (g) of subsection (1) of this section shall begin their terms on August 1, 2005. The initial terms of the members described in paragraphs (d) and (e) shall be two (2) years. The initial terms of the members described in paragraphs (f) and (g) shall be three (3) years and four (4) years, respectively. All subsequent terms for those members shall be four (4) years.
- (3) Vacancies occurring during the term of any member shall be filled in the same manner as the original appointment.
- (4) The nine (9) members of the authority and their successors shall be a body corporate and politic, with perpetual succession, constituting a public corporation and a governmental agency and instrumentality of the Commonwealth. The authority shall have the power, in its corporate name, to contract and be contracted with, acquire and convey property, sue and be sued, have and use a corporate seal, and exercise all of the usual powers of corporations not inconsistent with the authority's specifically enumerated powers.
- (5) The members of the authority shall receive no compensation for their services, but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their duties under KRS 353.750 to 353.776.
- (6) The secretary of the Finance and Administration Cabinet shall serve as chair, and the members of the authority shall elect a vice chair from their membership and appoint a secretary.
- (7) The secretary of the Finance and Administration Cabinet shall designate an employee of his or her cabinet to serve as treasurer of the authority. The treasurer shall give bond to the authority for a faithful accounting for all funds coming into his or her custody, in the amount the authority may prescribe, drawn upon a surety company qualified to do business in the Commonwealth. The premium shall be paid by the Commonwealth.
- (8) The authority shall establish and maintain an office and keep accurate and complete records of the authority's actions and proceedings, which shall be available for public inspection in accordance with KRS 61.870 to 61.884. The Finance and Administration Cabinet shall provide the funds, staff, facilities, and materials required by the authority in the conduct of its duties and functions.

➔Section 70. In order to reflect the reorganization effectuated by this Act, the reviser of statutes shall replace references in the Kentucky Revised Statutes to the agencies, subagencies, and officers affected by this Act with references to the appropriate successor agencies, subagencies, and officers established by this Act. The reviser of statutes shall base these actions on the functions assigned to the new entities by this Act and may consult with officers of the affected agencies, or their designees, to receive suggestions.

➔Section 71. The General Assembly confirms Executive Order 2008-516, dated June 6, 2008, to the extent that it is not otherwise confirmed or superseded by this Act.

**Signed by the Governor March 17, 2009.**

## CHAPTER 17

(HB 74)

AN ACT relating to special license plates.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 186 IS CREATED TO READ AS FOLLOWS:

*The Masonic Homes of Kentucky Inc. or its successor organization may petition the Transportation Cabinet to place a voluntary contribution on Masonic Order license plates in accordance with KRS 186.164(12) to (14).*

**Signed by the Governor March 20, 2009.**

## CHAPTER 18

(HB 124)

AN ACT relating to excused school absence.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 159.035 is amended to read as follows:

- (1) Notwithstanding the provisions of any other statute, any student in a public school who is enrolled in a properly organized 4-H club shall be considered present at school for all purposes when participating in regularly scheduled 4-H club educational activities, provided, the student is accompanied by or under the supervision of a county extension agent or the designated 4-H club leader for the 4-H club educational activity participated in.
- (2) Except as provided in paragraph (e) of this subsection, a public school principal shall give a student an excused absence of up to ten (10) school days to pursue an educational enhancement opportunity determined by the principal to be of significant educational value, including but not limited to participation in an educational foreign exchange program or an intensive instructional, experiential, or performance program in one (1) of the core curriculum subjects of English, science, mathematics, social studies, foreign language, and the arts.
  - (a) A student receiving an excused absence under this subsection shall have the opportunity to make up school work missed and shall not have his or her class grades adversely affected for lack of class attendance or class participation due to the excused absence.
  - (b) Educational enhancement opportunities under this subsection shall not include nonacademic extracurricular activities, but may include programs not sponsored by the school district.
  - (c) If a request for an excused absence to pursue an educational enhancement opportunity is denied by a school principal, a student may appeal the decision to the district superintendent, who shall make a determination whether to uphold or alter the decision of the principal. If a superintendent upholds a principal's denial, a student may appeal the decision to the local board of education, which shall make a final determination. A principal, superintendent, and local board of education shall make their determinations based on the provisions of this subsection and the district's school attendance policies adopted in accordance with KRS 158.070 and KRS 159.150.
  - (d) A student receiving an excused absence under the provisions of this subsection shall be considered present in school during the excused absence for the purposes of calculating average daily attendance as defined by KRS 157.320 under the Support Education Excellence in Kentucky program.
  - (e) A student shall not be eligible to receive an excused absence under the provisions of this subsection for an absence during a school's testing window established for assessments of the Commonwealth Accountability Testing System under KRS 158.6453 or during a testing period established for the administration of additional district-wide assessments at the school, except if a principal determines that

extenuating circumstances make an excused absence to pursue an educational enhancement opportunity appropriate.

- (3) (a) If a student's parent, de facto custodian, or other person with legal custody or control of the student is a member of the United States Armed Forces, including a member of a state National Guard or a Reserve component called to federal active duty, a public school principal shall give the student:
1. An excused absence for one (1) day when the member is deployed; ~~and~~
  2. An additional excused absence for one (1) day when the service member returns from deployment; *and*
  3. *Excused absences for up to ten (10) days for visitation when the member is stationed out of the country and is granted rest and recuperation leave.*
- (b) A student receiving an excused absence under this subsection shall have the opportunity to make up school work missed and shall not have his or her class grades adversely affected for lack of class attendance or class participation due to the excused absence.
- (c) A student receiving an excused absence under this subsection shall be considered present in school during the excused absence for the purposes of calculating average daily attendance as defined by KRS 157.320 under the Support Education Excellence in Kentucky program.

**Signed by the Governor March 20, 2009.**

## CHAPTER 19

### (HB 139)

AN ACT relating to the transportation of persons.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 281.605 is repealed and reenacted to read as follows:

The provisions of this chapter shall not apply, except as to safety regulations, to:

- (1) Motor vehicles used as school buses and while engaged in the transportation of students, under the supervision and control and at the direction of school authorities;
- (2) Except as provided in paragraph (e) of this subsection, motor vehicles, regardless of ownership, used exclusively:
  - (a) For the transportation of agricultural and dairy products, including fruit, livestock, meats, fertilizer, wood, lumber, cotton, products of grove or orchard, poultry, and eggs, while owned by the producer of the products, including landlord where the relation of landlord and tenant or landlord and cropper is involved, from the farm to a market, warehouse, dairy, or mill, or from one (1) market, warehouse, dairy, or mill to another market, warehouse, dairy, or mill;
  - (b) For the transportation of agricultural and dairy products, livestock, farm machinery, feed, fertilizer, and other materials and supplies essential to farm operation, from market or shipping terminal to farm;
  - (c) For both the purposes described in paragraphs (a) and (b) of this subsection;
  - (d) For the transportation of agricultural and dairy products from farm to regularly organized fairs and exhibits and return; or
  - (e) Motor vehicles used for the transportation of fly ash, in bags, sacks, or other containers, the aggregate weight of which does not exceed ten thousand (10,000) pounds; or bottom ash, waste ash, sludge, and pozatec which is being removed from the premises of a power generator facility for the purpose of disposal;
- (3) Motor vehicles used exclusively as church buses and while operated in the transportation of persons to and from a church or place of worship or for other religious work under the supervision and control and at the direction of church authorities;

- (4) Motor vehicles used exclusively for the transportation of property belonging to a nonprofit cooperative association or its members where the vehicle is owned or leased exclusively by the association;
- (5) Motor vehicles owned in whole or in part by any person and used by such person to transport commodities of which such person is the bona fide owner, lessee, consignee, or bailee; provided, however, that such transportation is for the purpose of sale, lease, rent, or bailment, and is an incidental adjunct to an established private business owned and operated by such person within the scope and in furtherance of any primary commercial enterprise of such person other than the business of transportation of property for hire;
- (6) Motor vehicles used in pick-up or delivery service within a city or within a city and its commercial area for a carrier by rail;
- (7) Motor vehicles used exclusively for the transportation of coal from the point at which such coal is mined to a railhead or tipple where the railhead or tipple is located at a point not more than fifty (50) air miles from the point at which the coal is mined;
- (8) Motor vehicles used as ambulances in transporting wounded, injured, or sick animals or as ambulances as defined in KRS 311A.010;
- (9) Motor vehicles used by transit authorities as created and defined in KRS Chapter 96A except as required by KRS 96A.170. Vehicles operated under the authority and direct responsibility of such transit authorities, through contractual agreement, shall be included within this exemption, without regard to the legal ownership of the vehicles, but only for such times as they are operated under the authority and responsibility of the transit authority;
- (10) Motor vehicles having a seating capacity of fifteen (15) or fewer passengers and while transporting persons between their places of residence, on the one hand, and, on the other, their places of employment, provided the driver himself is on his way to or from his place of employment, and further provided that any person who operates or controls the operation of vehicles hereunder of which said person is the owner or lessee, and any spouse of said person and any partnership or corporation with said person or his spouse having an interest therein doing such, shall be eligible to so operate an aggregate number of not more than one (1) vehicle on other than a nonprofit basis;
- (11) Motor vehicles used to transport cash letters, data processing material, instruments, or documents, regardless of the ownership of any of said cash letters, data processing material, instruments, or documents;
- (12) Motor vehicles operated by integrated intermodal small package carriers who provide intermodal-air-and-ground-transportation. For the purposes of this section, "integrated intermodal small package carrier" shall mean an air carrier holding a certificate of public convenience and necessity or qualifying as an indirect air carrier that undertakes, by itself or through a company affiliated through common ownership, to provide intermodal-air-and-ground-transportation, and "intermodal-air-and-ground-transportation" shall mean transportation involving the carriage of articles weighing not more than one hundred fifty (150) pounds by aircraft or other forms of transportation, including by motor vehicle, wholly within the Commonwealth of Kentucky. The incidental or occasional use of aircraft in transporting packages or articles shall not constitute an integrated intermodal operation within the meaning of this section;
- (13) Motor vehicles operated pursuant to a grant of funds in furtherance of and governed by 49 U.S.C. secs. 5310 or 5311, including all amendments, and whose operators have jurisdictions and services approved annually by the Transportation Cabinet in accordance with 49 C.F.R. Title VI;
- (14) Motor vehicles used to transport children to educational events or conservation camps run by, or sponsored by, the Department of Fish and Wildlife;
- (15) Motor vehicles used to transport children to events or camps run by, or sponsored by, the Kentucky Sheriffs Association; or
- (16)
  - (a) Motor vehicles used in the transportation of persons who are sixty (60) years of age or older or who are visually impaired, if the motor vehicles are owned by a nonprofit organization or being used on behalf of a nonprofit organization that is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code.
  - (b) Motor vehicles owned and operated by a nonprofit organization that are exempt under this subsection shall be subject to liability insurance coverage as established by KRS 281.655.

- (c) Motor vehicles owned privately but operated on behalf of a nonprofit organization that are exempt under this subsection shall be subject to liability insurance coverage as established by KRS 304.39-110.

**Signed by the Governor March 20, 2009.**

## CHAPTER 20

### (HB 208)

AN ACT relating to fish and wildlife.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 150.025 is amended to read as follows:

- (1) In carrying out the provisions of this chapter the department may, by administrative regulations promulgated under the provisions of KRS *Chapter* 13A:
  - (a) Fix, close, terminate, shorten, or divide open season, or make open seasons conditional;
  - (b) Regulate bag or creel limits and possession limits;
  - (c) Regulate buying, selling, or transporting;
  - (d) Regulate the size or type of any device used for taking, and regulate any method of taking;
  - (e) Regulate or restrict the places where taking is permitted;
  - (f) Regulate taking, or the opening or closing of seasons, in waters in which the department is conducting experiments or making improvements for the purpose of promoting the conservation of wildlife and increasing the supply thereof;
  - (g) Make administrative regulations apply to a limited area or to the entire state;
  - (h) Promulgate any other administrative regulations reasonably necessary to implement or carry out the purposes of this chapter.
- (2) The commissioner shall cause the text of every administrative regulation to be ***made available electronically on the department's Web site within five (5) working days of filing*** ~~published immediately after filing, once in two (2) newspapers having statewide circulation~~. The commissioner shall also cause to be prepared news releases concerning all ***new or amended*** administrative regulations for distribution to radio, television, and newspaper media.
- (3) This section shall apply to KRS Chapter 150 and no other KRS chapter pertaining to this subject shall apply to KRS Chapter 150.

➔Section 2. KRS 150.175 is amended to read as follows:

The kinds of licenses and tags authorized by this chapter, and the acts authorized to be performed under the licenses and tags, subject to the other provisions of this chapter and subject to administrative regulations promulgated under this chapter, shall be as follows:

- (1) Statewide resident sport fishing license, which authorizes the holder to take fishes by angling, or take crayfish by a minnow seine, or by hand, to take minnows by the use of a minnow seine, minnow trap, or dip net, or to take fishes by grabbing, giggering, snagging, snaring, jugging, and bow and arrow, and to take frogs and turtles from any waters in any county of this state open for such purposes and subject to the limitations in this chapter and additional limitations that the department may from time to time prescribe. This license shall not authorize the holder to sell fish;
- (2) A short-term sport fishing license, which authorizes the holder to perform all acts authorized by a statewide sport fishing license and subject to the same limitations or prescribed administrative regulations. This license shall not authorize the holder to sell fish;
- (3) A resident commercial fishing license and a nonresident commercial fishing license, which authorize a holder to perform any act authorized by a sport fishing license and to take rough fishes from the waters of the state by

- the use of commercial fishing gear as prescribed by administrative regulation. The license shall also authorize the holder to sell rough fishes, other than those protected by administrative regulation;
- (4) A commercial fishing gear tag, which shall be attached to each piece of commercial fishing gear including hoop nets, slat traps, trotline, wing nets, and to each one hundred (100) feet of linear gear or portion thereof in use, including commercial seines, gill nets, or trammel nets. Commercial gear tags may be issued only to a person holding a resident or nonresident commercial fishing license;
  - (5) Live fish and bait dealer's licenses, resident and nonresident, which authorize the holder to sell bait and live fish as may be prescribed by administrative regulation;
  - (6) Musseling licenses, resident and nonresident, which authorize the holder to take mussels for commercial purposes as may be prescribed by administrative regulation;
  - (7) A statewide resident hunting license, which authorizes the holder to take or pursue wild animals, wild birds, frogs, and turtles with gun, bow and arrow, dog, or falcon, or to participate in a fox-hunting party engaged in the hunting or pursuing of foxes with dogs for sport, according to the provisions of the laws and administrative regulations of the department;
  - (8) A junior statewide hunting license, which may be issued to a person before he has reached his sixteenth birthday, and which authorizes the holder to exercise all the privileges authorized by a statewide hunting license. No junior hunting license shall be issued without the written permission of parent, guardian, or person having custody of the person under sixteen (16) years of age;
  - (9) Trapping licenses, resident and nonresident, which authorize the holder to take wild animals by trapping upon his own lands or upon the lands of another person, if the holder of the license ~~has~~<sup>shall have</sup> first obtained ~~oral or~~<sup>written</sup> consent as provided in KRS 150.092 *and administrative regulation*;
  - (10) Taxidermist licenses, commercial and noncommercial, which authorize the holder to engage in the act of preparing, stuffing, and mounting the skins of wildlife;
  - (11) A commercial guide's license, which authorizes the holder to guide hunting and fishing parties according to the provisions of the laws and administrative regulations of the department;
  - (12) Fur buyer's licenses, resident and nonresident, which authorize the holder to buy raw furs from licensed trappers and hunters and to sell raw furs so purchased. Applicants for the license shall state the number of premises to be used and shall display at each a copy of the license as furnished by the department, except that the commissioner may limit the number of copies furnished and may revoke the license for violation;
  - (13) A fur processor's license, which may be issued only to a resident, a partnership, firm, or corporation of this state and which authorizes the holder to buy raw furs when in legal possession for processing, manufacture, or retention in cold storage or for resale;
  - (14) A nonresident sport fishing license, which authorizes the holder to perform any act authorized by a resident statewide sport fishing license. This license shall not authorize the holder to sell fish;
  - (15) A nonresident annual hunting license, which authorizes the holder to perform any act authorized by a resident statewide hunting license;
  - (16) Shoot-to-retrieve field trial permits, four (4) day and single day, which authorize a permit holder to conduct a shoot-to-retrieve field trial on private or government-owned lands. With a four (4) day permit, all participants, whether residents or nonresidents, shall not be required to possess any other license to participate in the permitted field trial, and the permit shall expire four (4) days after the date on which the field trial began. With the single day permit, the permit is valid for one (1) day and all participants shall have a valid resident or nonresident annual Kentucky hunting license. A permit is not required to conduct a shoot-to-retrieve field trial on a licensed shooting preserve; however, all participants that take or attempt to take game shall have in their possession a resident or nonresident annual Kentucky hunting license;
  - (17) Game permits and junior game permits, which, in combination with a valid statewide hunting license or a valid junior statewide hunting license, authorize the holder to take or pursue the specified game species in any designated open area of this state, during the open season and according to the provisions of the laws and administrative regulations governing the hunting;
  - (18) A combination hunting and fishing license, which authorizes only resident holders to perform all acts valid under either a sport fishing or hunting license;

- (19) A trout permit, which in combination with a valid statewide fishing license, authorizes the holder to take trout by angling or as may be prescribed by administrative regulation;
- (20) A commercial waterfowl permit, which authorizes the holder to establish and operate a commercial waterfowl hunting preserve;
- (21) A short-term hunting license, ~~which may be issued only to a nonresident and~~ which authorizes the holder to perform all acts authorized by a statewide hunting license according to the provisions of the laws and administrative regulations of the department;
- (22) A joint statewide resident sport fishing license issued to a husband and wife which authorizes them to take fish as provided in subsection (1) of this section. The license fee for this joint license shall be ten percent (10%) less than the license fee set by the commission for two (2) statewide resident sport fishing licenses;
- (23) A Kentucky waterfowl permit, which in combination with a valid statewide hunting license and compliance with applicable federal law, authorizes the holder to take or pursue waterfowl and migratory shore or upland game birds;
- (24) A pay lake license which authorizes the holder to operate privately owned impounded waters for fishing purposes for which a fee is charged;
- (25) A migratory game bird permit, which, in combination with a statewide hunting license and compliance with applicable federal law, allows the holder to take migratory shore or upland game birds;
- (26) A senior/disabled combination hunting and fishing license, which authorizes the holder to perform all acts valid under a sport fishing license, a sport hunting license, or a state permit to take deer, turkey, trout, waterfowl, or migratory shore or upland game birds, and which shall be available to a Kentucky resident who is:
  - (a) Sixty-five (65) years of age or older; or
  - (b) An American veteran at least fifty percent (50%) disabled as a result of a service-connected disability; or
  - (c) Declared permanently and totally disabled by the Federal Social Security Administration, the United States Office of Personnel Management, the Teachers' Retirement System of the State of Kentucky, the Office of Workers' Claims, or its equivalent from another state, or the United States Railroad Retirement Board.

The senior/disabled combination license shall not be valid unless the holder carries proof of residency and proof of age or disability, as the department may require by administrative regulation, on his or her person while performing an act authorized by the license;

- (27) A sportsman's license for residents that includes an annual hunting and fishing license and such permits as allowed by administrative regulations promulgated by the department; and
- (28) A special license for residents and nonresidents for the purpose of hunting on licensed shooting areas. This license shall be valid only for the shooting areas for which it was issued and shall remain in effect for one (1) year. If the hunter holds either a nonresident or resident statewide hunting license for the current year, the special license shall not be required.

➔Section 3. KRS 150.179 is amended to read as follows:

- (1) In this section, "recreational activity" means hunting, fishing, or trapping for sport.
- (2) For ~~an~~ ~~a special department sponsored~~ event or program **supporting**~~involving~~ a recreational activity, the commission may waive the requirement that participants hold licenses, **or may discount licenses or permits**, required under this chapter if the commission finds that:
  - (a) The special event or program will provide education in or appreciation of the recreational activity; and
  - (b) The waiver of the license requirement will not result in a substantial loss of revenue to the department.
- (3) The department shall, for one (1) weekend each year, suspend enforcement of the requirement that persons fishing in the waters of the Commonwealth buy and hold a license.

➔Section 4. KRS 150.410 is amended to read as follows:

- (1) No person shall set, use, or maintain a trap for the purpose of taking wildlife unless there is attached thereto a metal tag giving *either* the name and address of, *or the wildlife identification number as prescribed in administrative regulation that corresponds to*, the person setting, using, or maintaining the trap.
- (2) Each person who sets a trap for the purpose of taking wildlife shall visit the same at least once every twenty-four (24) hours and remove any wildlife found therein.
- (3) No person shall set a trap in such manner as unreasonably to endanger the life or safety of any domestic animal.

**Signed by the Governor March 20, 2009.**

## CHAPTER 21

### (HB 301)

AN ACT relating to animal protection.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS 258.095 TO 258.500 IS CREATED TO READ AS FOLLOWS:

- (1) *No person other than the owner shall tamper with or remove without permission an identification tag, chip, locator, or electronic tracking device from a domesticated animal of any age, including but not limited to a hound or dog used in the sport of hunting.*
- (2) *Subsection (1) of this section shall not apply to a person removing an identification tag, chip, locator, or electronic tracking device if the removal is:*
  - (a) *Necessary to prevent or treat an injury to the animal;*
  - (b) *Done by a law enforcement officer or animal control officer for a legitimate purpose;* or
  - (c) *Done with the written permission of the owner of the animal.*
- (3) *Any person who violates the provisions of this section shall be guilty of a Class A misdemeanor.*

**Signed by the Governor March 20, 2009.**

## CHAPTER 22

### (HB 302)

AN ACT relating to agriculture.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 257.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) *"Abandon" means to forsake entirely, or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner or his agent;*
- (2) *"Board" means the Board of Agriculture;*
- (3)~~(2)~~ *"Commissioner" means the Commissioner of Agriculture;*
- (4)~~(3)~~ *"Communicable disease" means a disease that can be directly or indirectly transmitted from one (1) animal to another*[includes hog cholera, brucellosis, leptospirosis, anthrax, black leg, catarrhal influenza of cattle, contagious pleuro pneumonia, foot and mouth disease or aphthous fever, glanders, hemorrhagic septicemia, maladie du coit or dourine, mange of cattle, necrobacillosis and foot rot in sheep, hydrophobia, rinderpest, scabies in cattle, Texas tick or southern cattle fever, tuberculosis, equine viral arteritis, or any other disease proclaimed by the board to be of a transmissible character];

- (5)~~(4)~~ "Compost" means the humus-like product of the process of composting domestic livestock, poultry, or fish, which may be used as a soil conditioner or enhancer;
- (6)~~(5)~~ "Composting" means the biological decomposition of organic matter~~{ which inhibits pathogens}~~;
- ~~(6) "Experiment station" means the agricultural experiment station;~~
- (7) **"Department" means the Department of Agriculture;**
- (8) "Fish" means the bodies and parts of bodies of all animal aquatic life being raised, or kept for sale to a wholesaler or retailer, or for direct sale to the public;
- (9)~~(8)~~ "Livestock" means:
- (a) Cattle, sheep, swine, *goats, horses, llamas, buffaloes, or any other animals of the bovine, ovine, porcine, caprine, equine, or camelid species; and*
- (b) *Deer, elk, and any other animal of the cervid species;*
- whose regulatory requirements are under KRS Chapters 150 and 246, and are privately owned and raised in a confined area for breeding stock, food, fiber, and other products*~~{deer and elk, whose regulatory requirements are under KRS Chapters 150 and 246, that are privately owned and raised in a confined area for breeding stock, food, fiber, and other products, goats, horses, or any other animals of the bovine, ovine, porcine, caprine, or equine species}~~;
- (10)~~(9)~~ "National animal identification system" means a national program intended to identify animals and track them as they come into contact with or commingle with animals other than herdmates from their premises of origin;
- (11)~~(10)~~ "National Poultry Improvement Plan" shall have the same meaning as set out in the *United States*~~{U.S.}~~ Code of Federal Regulations, 9 C.F.R. Part 145, and the auxiliary provisions in 9 C.F.R. Part 147;
- (12)~~(11)~~ "Owner" means any person owning or leasing from another, or having in charge any domestic animal;
- (13)~~(12)~~ "Poultry" means~~{all}~~ chickens, ducks, turkeys, or other domestic fowl being raised or kept on any premises in the Commonwealth~~{for profit}~~~~;~~~~{and}~~
- (14)~~(13)~~ "Premises" means any portion of land, or any structure erected on land~~;~~~~{}~~ and
- (15) **"Reportable disease" means an animal disease that shall be reported to state or federal animal health officials when suspected or diagnosed**~~{ any vehicle or vessel used in the transportation of passengers, goods, or animals}~~.

➔Section 2. KRS 257.020 is amended to read as follows:

The board shall:

- (1) Enforce the provisions of this chapter;
- (2) Adopt and enforce such measures as it deems necessary to **protect and promote the livestock, poultry, fish, and animal industries**~~{improve and protect the livestock industry}~~;
- (3) Prevent, control and eradicate any communicable disease of livestock, **poultry, and fish**;
- (4) Investigate the prevalence of communicable diseases in livestock, **poultry, and fish** upon receipt of reports of such diseases;
- (5) Issue such **information**~~{literature}~~ as it deems necessary for public distribution;
- (6) Give information and instruction to farmers and breeders and feeders of livestock, **poultry, and fish** in the nature, cause, prevention and control of communicable diseases; and
- (7) Regulate the importation, sale, use and distribution of products or material used in the diagnosis, treatment or prevention of **animal**~~{livestock}~~ diseases.

➔Section 3. KRS 257.030 is amended to read as follows:

The board may:

- (1) Cooperate with *universities and other entities*~~[the experiment station]~~ in conducting the necessary scientific investigations relating to the cause, nature, prevention and treatment of communicable diseases ~~of~~<sup>in</sup> livestock, *poultry, and fish*;
- (2) Establish, maintain and enforce such quarantine and other measures as it deems necessary in controlling the movement of livestock, *poultry, and fish* into, through or within the state;
- (3) Order and enforce the cleaning and disinfection of premises and all articles and materials by which communicable diseases may be transmitted, and the destruction of diseased and exposed animals and all such property and materials, as may be necessary in the eradication of disease;
- (4) Adopt, issue and enforce~~[such]~~ regulations~~[as in its judgment may be]~~ necessary for the proper administration and enforcement of the provisions of this chapter, and for the accomplishment of the purposes intended to be accomplished by this chapter; ~~and~~~~[however, nothing in this section is intended to authorize the prohibition of, or sale or distribution, by a licensed pharmacist, of any serum, virus or other product used in the prevention or treatment of swine diseases that has been approved by the State Board of Agriculture.]~~
- (5) Employ necessary scientific, field, stenographic and clerical assistants and fix their salaries.

➔Section 4. KRS 257.040 is amended to read as follows:

No person who has in his possession any domestic animal infected with a *reportable*~~[communicable]~~ disease shall:

- (1) ~~[Knowingly]~~ Permit such an animal to run at large;
- (2) ~~[Knowingly]~~ Keep such an animal where other domestic animals, not affected with or previously exposed to the disease, may become infected with or exposed to it;
- (3) ~~[Knowingly]~~ Permit such an animal to go on, across or along any public highway, or in any field or lot adjacent to any public highway, or in any field through which flows a stream; or
- (4) *Transport*~~[Except upon a special permit from the board, ship, drive, haul]~~, sell, offer for sale, trade or give away such an animal, *except upon permission or approval from the state veterinarian.*

➔Section 5. KRS 257.050 is amended to read as follows:

No person shall willfully obstruct, evade or disregard any quarantine which the board declares, or violate any regulation for the prevention of the spread of communicable diseases among livestock, *poultry, and fish*, or conceal or attempt to conceal an animal infected with or exposed to a communicable disease.

➔Section 6. KRS 257.060 is amended to read as follows:

- (1) *Except upon permission or approval from the state veterinarian*, no person~~[, except a common carrier]~~ shall:
  - (a) *Transport*~~[ship, drive, haul]~~ or in any other way bring into this state ~~an~~<sup>any</sup> animal that is infected with a communicable disease, or that has within the previous thirty (30) days been exposed to a communicable disease,~~[,] or [shall in any way]~~
  - (b) Bring into this state any animal in violation of any order or regulation of the board that establishes an interstate quarantine to prevent the entrance of disease into this state.
- (2) No common carrier shall transport any~~[domestic]~~ animal into this state in violation of law or regulations of the board.

➔Section 7. KRS 257.070 is amended to read as follows:

- (1) The movement of domestic animals from other states into this state shall be made only in compliance with regulations of the board.
- (2) Any animal brought into this state in violation of any regulation of the board shall:
  - (a) Be placed in quarantine~~[and so held]~~ until the necessary inspection or test has been completed by a representative or agent of the board. All expenses incident to the quarantine, including the inspection and testing, shall be borne by the owner; *or*
  - (b) *Be removed from the state at the direction of the state veterinarian.*

➔Section 8. KRS 257.080 is amended to read as follows:

~~{(1) }~~Every veterinarian, *laboratory*, owner, or person having knowledge of the existence of any *reportable*~~[communicable]~~ disease of livestock, *poultry, or fish* within the state shall immediately report the disease to the ~~county livestock inspector of the county in which the disease exists, or to the~~ state veterinarian. *The department shall promulgate administrative regulations listing all reportable diseases of livestock, poultry, and fish and setting out the conditions under which the diseases shall be reported*

~~{(2) This report shall be in writing and shall include a description of the animal, the name and exact post office address of the owner, the location of the animal, the number of susceptible animals exposed to the disease and the number of animals that have died of the disease.}~~

➔Section 9. KRS 257.100 is amended to read as follows:

- (1) Any peace officer, animal control officer, or any *person authorized by the board*~~[officer of the accredited Humane Society or Society for the Prevention of Cruelty to Animals]~~ may destroy or kill or cause to be destroyed or killed, any animal found abandoned and suffering and not properly cared for, or appearing to be injured, diseased, or suffering past recovery for any useful purpose.
- (2) Before destroying the animal the officer shall obtain the judgment to that effect of a veterinarian, or of two (2) reputable citizens called by him to view the animal in his presence, or shall obtain consent to the destruction from the owner of the animal.
- (3)
  - (a) Any animal placed in the custody of a licensed veterinarian for treatment, boarding, or other care, which shall be unclaimed by its owner or his agent for a period of more than ten (10) days after written notice by certified mail, return receipt requested, is given the owner or his agent at his last known address, shall be deemed to be abandoned and may be turned over to the nearest humane society or animal shelter or disposed of as the custodian may deem proper.
  - (b) The giving of notice to the owner, or the agent of the owner of the animal by the licensed veterinarian shall relieve the licensed veterinarian and any custodian to whom the animal may be given of any further liability for disposal.
- (4) ~~{For the purpose of this section, the term "abandon" means to forsake entirely, or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner, or his agent.} Abandonment shall constitute the relinquishment of all rights and claims by the owner to the animal.~~

➔Section 10. KRS 257.105 is amended to read as follows:

- (1) In addition to KRS 257.100 or any other provision authorized by law, any unclaimed animal held by a licensed veterinarian for more than ten (10) days of veterinary care and treatment requested by the owner or lawful possessor of the animal may be summarily sold by the veterinarian for the reasonable value of the animal upon compliance with the procedures set forth in this section.
- (2) The veterinarian under subsection (1) of this section shall give written notice of the required payment for services performed and notice of the proposed sale of the animal to the owner or lawful possessor of the animal and to any lienholders of record by certified mail. If the whereabouts of the owner or lawful possessor of the animal cannot be ascertained with reasonable diligence, a notice of the proposed sale shall be published in a newspaper, qualified under KRS 424.120, circulated in the county where the animal is located at least ten (10) days preceding the sale. The notice shall state the amount due and the date, place and time of sale.
- (3) The proceeds of a sale under this section shall first be used to reimburse the veterinarian for an amount equal to the reasonable value of the veterinary care and treatment, plus any other care and board given the animal; the excess amount, if any, from a sale shall be paid to the owner or lawful possessor of the animal or to other persons legally entitled thereto. If the proceeds from the sale fail to cover the amount owed the veterinarian, the owner or lawful possessor of the animal shall remain liable for the unpaid portion.
- (4) A sale under this section shall not relieve the owner or lawful possessor of the animal from any other obligation to the veterinarian.
- (5) Any veterinarian making a sale provided for in this section shall make a sworn statement setting forth the following:
  - (a) The kind and number of animals sold;
  - (b) The amount realized from any such sale;

- (c) The amount claimed due by the veterinarian;
- (d) The name of the former owner or lawful possessor requesting the care and treatment performed by the veterinarian on the animal or animals sold;
- (e) The dates when the treatment was commenced and was completed;
- (f) The date or dates when notice of the proposed sale was given the owner or lawful possessor of the animal or animals sold;
- (g) The description *or the identification number* of the animal or animals sold, and if branded, the brand thereon;
- (h) The name and address of the veterinarian making the sale; and
- (i) The name and address of the purchaser of the animal or animals sold.

The record shall be filed within five (5) days of the sale in the office of the county clerk of the county in which the sale is made.

➔Section 11. KRS 257.120 is amended to read as follows:

- (1) Indemnities shall be paid by the state or federal government for animals *mandated to be* destroyed or slaughtered on account of a *reportable or United States Department of Agriculture (USDA) program*~~communicable~~ disease. *The indemnities shall be based on fair market value as determined by the USDA or independent appraisal*~~, foot and mouth disease, glanders, contagious pleuro pneumonia, bovine tuberculosis, Bang's disease, or maladie du coit or dourine, or a disease for which the United States government pays the amounts specified by the state and federal cooperative agreement.~~
- ~~(2) Indemnity for Bang's reactors or exposed animals, if indemnity is available, shall be paid by the state or federal government in accordance with amounts specified by the state and federal cooperative agreement.~~
- ~~(2)~~~~(3)~~ No *state-funded* indemnity shall be paid for any animal unless it was the property of the person claiming indemnity, and was within the state, for a period of at least six (6) months prior to the time of the first test, except when animals are destroyed or slaughtered on account of *a foreign animal or zoonotic disease*~~[aphthous fever or foot and mouth disease, dourine, glanders or contagious pleuro pneumonia]~~.
- ~~(3)~~~~(4)~~ No indemnity shall be paid for any animal:
  - (a) Owned by the United States, the state or any county or city;
  - (b) Brought into this state in violation of the law or any regulation of the board;
  - (c) When the owner at the time of coming into possession of the animal had any reason to believe that it was infected; or
  - (d) When the board or its authorized agents have satisfactory evidence that the owner has been guilty of negligence in permitting the animal to become exposed to the communicable disease.

➔Section 12. KRS 257.130 is amended to read as follows:

In case of an epizootic of such character as to necessitate the destruction of property or materials to prevent the spread of disease, the property or materials shall be destroyed and indemnities paid as provided for in KRS 257.110, 257.120, 257.140, and 257.150 ~~for the destruction or slaughter and the payment of indemnities for animals~~.

➔Section 13. KRS 257.150 is amended to read as follows:

After *carcass disposal, cleaning, and* disinfection has been completed~~[and the carcass has been disposed of]~~, the board shall execute a voucher upon the Finance and Administration Cabinet for the amount of the indemnity due the owner, for payment from funds appropriated for this purpose. The voucher shall be approved by the state veterinarian and the chairman of the board. When the check for payment is issued by the State Treasurer, he shall forward it to the chairman of the board who shall pay it to the owner.

➔Section 14. KRS 257.160 is amended to read as follows:

- (1) All carcasses of domestic livestock, poultry, and fish which have died or which have been destroyed on account of any disease, except *as determined and permitted by*~~those destroyed on account of tuberculosis and~~

~~slaughtered under the supervision of~~ the state veterinarian or other representative of the board, shall be disposed of by:

- (a) Complete incineration of the entire carcass and all of its parts and products;
  - (b) Boiling the carcass and all of its parts and products in water or heating it with steam at a temperature above boiling, continuously for two (2) hours or more;
  - (c) Burying the carcass and all of its parts and products in the earth at a point which is never covered with the overflow of ponds or streams and which is not less than one hundred (100) feet distant from any watercourse, sinkhole, well, spring, public highway, residence, or stable. The carcass shall be placed in an opening in the earth at least four (4) feet deep, the abdominal and thoracic cavities opened wide their entire length with a sharp instrument, and the entire carcass covered with two (2) inches of quicklime and at least three (3) feet of earth.
  - (d) Removal of the carcass by a duly-licensed rendering establishment;
  - (e) Deposition of the carcass in a contained landfill approved pursuant to KRS Chapter 224;
  - (f) Composting of the carcass in a facility according to the board's administrative regulations and approved in accordance with KRS Chapter 224;
  - (g) Any combination of the methods set forth in *paragraphs*~~[subsection]~~ (a) to (f) of this *subsection*~~[section]~~; or
  - (h) Any other scientifically-proven method of disposal approved by the board.
- (2) The owner shall dispose of the carcass of domestic livestock, poultry, and fish as provided in subsection (1) *of this section*, within forty-eight (48) hours after the carcass is found unless the carcass is otherwise preserved in cold storage.
  - (3) The board is authorized to promulgate administrative regulations to implement this section.

➔Section 15. KRS 257.170 is amended to read as follows:

*An animal carcass*~~[Carcasses of animals]~~ shall not~~[under any circumstances]~~ be loaded in cars, crates, boats, wagons or other vehicles containing live animals, except on special permit from the state veterinarian.

➔Section 16. KRS 257.300 is amended to read as follows:

The board may cooperate with~~[the Bureau of Animal Industry of]~~ the United States Department of Agriculture and with officials in charge of livestock, *poultry, and fish* sanitation in other states, or with any other agency that, in the opinion of the board, is for the best interests of the livestock, *poultry, and fish industries*~~[industry]~~, in maintaining interstate quarantine and in the prevention, control and eradication of any communicable disease in livestock, *poultry, and fish*.

➔Section 17. KRS 257.480 is amended to read as follows:

It is the legislative policy that every Kentucky citizen exert the maximum local effort to enforce the livestock,~~[and]~~ poultry, *and fish* disease control programs in KRS 257.010 to KRS 257.470 and provide protection to the citizens and livestock, *poultry, and fish* of the Commonwealth.

➔Section 18. KRS 257.490 is amended to read as follows:

- (1) The *Commissioner*~~[state veterinarian]~~ shall have the power to *employ persons to serve*~~[designate certain employees of the Division of Animal Health]~~ as peace officers~~[for the purpose of enforcing the provisions of this chapter]~~. *All persons employed as peace officers by the department shall meet the qualifications set forth in KRS 15.380 to 15.404 concerning officer certification and training.*
- (2) *Officers employed by the department shall have full powers as peace officers and shall be limited to the enforcement of Department of Agriculture statutes and administrative regulations, except when it is necessary to enforce provisions of KRS Chapter 514 related to theft cases involving animals, provisions of KRS Chapter 516 related to forgery of animal health certificates, or provisions of KRS Chapter 525 related to animal cruelty, mistreatment, or torture.*

- (3) *The department shall establish and maintain an operational procedures manual outlining specific actions to be taken by officers pursuant to this section.*

➔Section 19. KRS 257.600 is amended to read as follows:

The Department of Agriculture shall promulgate regulations governing the feeding of ~~untreated~~ garbage to swine ~~in order to prevent the transmission of viral, bacterial or parasitical diseases to man or animals. A permit may be required of any individual feeding garbage to swine. The department may charge a maximum fee of ten dollars (\$10) for the issuance of a permit.~~ The department may conduct such inspections as are required to enforce this section.

➔Section 20. The following KRS sections are repealed:

257.115 Retest for brucellosis -- Application, effect of negative finding.

257.260 State livestock inspector.

257.310 Birds that carry disease to be destroyed.

**Signed by the Governor March 20, 2009.**

## CHAPTER 23

### (HB 329)

AN ACT relating to veterans' affairs.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 40.305 is amended to read as follows:

- (1) There is created a board to be known as the Governor's Advisory Board for Veterans' Affairs, which shall be attached to the Department of Veterans' Affairs.
- (2) The board shall be composed of the following:
  - (a) Seven (7) members appointed by the Governor;
  - (b) The executive director of the Kentucky Commission on Military Affairs; and
  - (c) The adjutant general of the Commonwealth.
- (3) All board members appointed by the Governor shall serve until their successors are appointed, and all appointments shall be for three (3) years. It is further provided that the appointments shall be veterans with service during time of war or hostilities wherein American troops were engaged in conflict with an armed enemy. If practicable, the Governor, in making appointments to the board, shall give due consideration to a fair representation on the board of nationally recognized veterans' organizations active in Kentucky, based on size of the membership of such organizations in this state. The state headquarters of each major veterans' organization may, from time to time, submit a list of not more than three (3) names to the Governor from which list original appointments may be made and vacancies filled in his discretion.
- (4) Members of the board shall meet at least **quarterly** ~~once every two (2) months~~ at the Department of Veterans' Affairs, and at such other times as the chairman may designate, and the members shall decide as to the specific meeting date.
- (5) Members of the board shall be paid for the actual expenses incurred upon attendance of meetings of the board subject to the Finance and Administration Cabinet regulations.
- (6) At its first meeting the members of the board shall select a chairman, vice chairman, and secretary from among the appointed members.
- (7) The Department of Veterans' Affairs shall provide administrative support to the board.
- (8) The board shall advise the commissioner of the Department of Veterans' Affairs and the Governor on the administration of veterans' services programs.
- (9) The commissioner shall advise the Governor on matters relating to veterans' affairs.

- (10) The commissioner and the board shall advise the General Assembly on matters relating to veterans' affairs and the administration of veterans' services programs.

**Signed by the Governor March 20, 2009.**

## CHAPTER 24

**(HB 344)**

AN ACT relating to surplus agricultural commodities.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 7 of this Act:*

- (1) *"Agricultural commodity" means any agricultural product, including but not limited to plant and animal products grown, raised, or produced within this state for use as food, feed, seed, or any aesthetic, industrial, or chemurgic purpose; and*
- (2) *"Food bank" means a surplus food collection and distribution system operated and established to assist in bringing donated food to nonprofit charitable organizations and individuals for redistribution to reduce hunger and supply nutritional needs.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

*There is hereby established in the Department of Agriculture a program to award grants to nonprofit organizations for the purpose of collecting and distributing Kentucky grown and raised surplus agricultural commodities to food banks and other charitable organizations that serve needy or low-income individuals.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to available funds, a nonprofit organization is eligible to receive a grant under Sections 1 to 7 of this Act if the organization:*
  - (a) *Has at least five (5) years of experience coordinating a statewide network of food banks and charitable organizations that serve counties of this state;*
  - (b) *Operates a program that coordinates the collection and transportation of surplus agricultural commodities to a statewide network of food banks that provide food to needy or low-income individuals; and*
  - (c) *Submits to the department, in a manner and time prescribed by the department, a proposal for the collection and distribution of agricultural commodities to food banks and other charitable organizations for use in providing food for needy or low-income individuals, including:*
    1. *A description of the proposal;*
    2. *A schedule of projected costs for the proposal;*
    3. *Measurable goals for the proposal; and*
    4. *A plan for evaluating the success of the proposal.*
- (2) *A nonprofit organization that receives a grant under Sections 1 to 7 of this Act shall comply with the following requirements:*
  - (a) *Purchases shall be made from Kentucky farmers, growers, and vendors;*
  - (b) *Agricultural commodities collected and distributed shall be culls or those designated as surplus or unmarketable, and not primary agricultural commodities. Surplus or unmarketable agricultural commodities or culls shall be purchased at production cost or below market price from produce auctions, farmers, growers, and vendors; and*

- (c) *Donations of culls, or surplus or unmarketable agricultural commodities from farmers' markets, cooperatives, farmers, and growers shall be encouraged. Persons making the donations may be reimbursed for picking, packaging, processing, transportation, storage, distribution, or other costs.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

*A nonprofit organization that receives a grant under Sections 1 to 7 of this Act shall report the results of the project to the department in a manner prescribed by the department.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

- (1) *The Surplus Agricultural Commodities Advisory Committee is hereby created for the purpose of advising the department concerning the implementation and administration of the program established under Sections 1 to 7 of this Act. The committee shall be composed of no fewer than ten (10) but no more than fifteen (15) members appointed by the commissioner. Membership on the committee shall include:*
- (a) *Food and nutrition advocates;*
  - (b) *Regional food bank representatives;*
  - (c) *Local government representatives;*
  - (d) *Representatives of the department and Governor's Office;*
  - (e) *Agricultural commodity producers;*
  - (f) *Representatives of farm advocacy groups;*
  - (g) *Representatives of Kentucky public or private colleges and universities; and*
  - (h) *At-large members designated by the commissioner.*
- (2) *The advisory committee shall elect a chairperson during the first organizational meeting.*
- (3) *The committee shall:*
- (a) *Advise the department concerning the implementation and administration of Sections 1 to 7 of this Act; and*
  - (b) *Make recommendations to the department regarding the content of administrative regulations promulgated by the department in accordance with Sections 1 to 7 of this Act.*
- (4) *Appointed committee members may be reimbursed for reasonable and necessary expenses incurred while engaged in carrying out the official duties of the committee.*
- (5) *The committee shall be attached to the Department of Agriculture for administrative purposes.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

- (1) *The Surplus Agricultural Commodities Fund is hereby created in the State Treasury as a restricted account to be administered by the department for the purposes provided in this section.*
- (2) *Notwithstanding the provisions of KRS 45.229, any moneys accruing to this fund in any fiscal year, including state appropriations, gifts, grants, federal funds, interest, and any other funds both public and private, shall not lapse but shall be carried forward to the next fiscal year.*
- (3) *Moneys received in the fund shall be used for carrying out the provisions of Sections 1 to 7 of this Act.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

*The commissioner shall promulgate the administrative regulations necessary to carry out the provisions of Sections 1 to 7 of this Act.*

Signed by the Governor March 20, 2009.

**CHAPTER 25****(HB 407)**

AN ACT authorizing the payment of certain claims against the Commonwealth which have been duly audited and approved according to law, and have not been paid because of the lapsing or insufficiency of former appropriations against which the claims were chargeable, or the lack of an appropriate procurement document in place, making an appropriation therefor and declaring an emergency.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. (1) There is appropriated out of the general fund and the transportation fund in the State Treasury for the purpose of compensating persons and companies named below for claims which have been duly audited and approved according to law, but have not been paid because of lapsing or insufficiency of former appropriations against which the claims were chargeable, or the lack of an appropriate procurement document in place, the amounts listed below:

Access Marketing 1101 Bay Street, Suite 2401 Toronto, Ontario M5S 2W8	\$3,635.93
Clay Tire Sales, Inc. 1082 North State Highway 7 Grayson, KY 41143	\$938.93
Corbin Independent Board of Education 108 Roy Kidd Avenue Corbin, KY 40701	\$8,333.33
DB Bass LLC 109 Capital Avenue Frankfort, KY 40601	\$1,700.00
Bill Edwards 812 Bass Lane Shelbyville, KY 40065	\$3,090.00
Bill Edwards 812 Bass Lane Shelbyville, KY 40065	\$3,941.75
Luis Galarza 6228 Deermeade Drive Florence, KY 41042	\$2,431.02
Gallagher & Associates 7735 Old Georgetown Road Bethesda, MD 20814	\$24,760.80
Kentucky Association of Realtors 161 Prosperous Place Lexington, KY 40509	\$14,521.76

Lowe's Home Centers, Inc. #492 350 Leonardwood Road Frankfort, KY 40601	\$1,194.15
Marc Rosen 2223 Paradise Lane Ashland, KY 41102	\$534.80
Synthesis Technology, Assessment & Research 296 South Main Street Springville, UT 84663	\$11,746.33
Gerald Theisen 109 Pintail Court Georgetown, KY 40324	\$1,663.84
Travel Industry Association 1100 New York Avenue, NW, Suite 450 Washington, DC 20005-3934	\$40,768.00
University of Kentucky Department of History 1715 Patterson Office Tower Lexington, KY 40506-0027	\$105,584.70
Hunter B. Whitesell II 126 Rose Road Fulton, KY 42041	\$60.00
Adecco Employment Services Dept. CH 14091 Palatine, IL 60055-4091	\$23,570.40
Automated Distribution Solutions 3155 Development Way Sellersburg, IN 47172	\$13,103.82
Childwatch CAC, Inc. P.O. Box 1262 Paducah, KY 42002-1262	\$3,946.92
Conley Trucking 195 Slocum Heights Portsmouth, OH 45662	\$12,153.65
Law Office of Lori M. Reynolds, PLLC 74 Willies Way Hazard, KY 41701	\$36,010.50
Stoll, Keenon, Ogden, PLLC	

2000 PNC Plaza, 500 W. Jefferson Street Louisville, KY 40202-2828	\$29,202.72
Trover Clinic 200 Clinic Drive Madisonville, KY 42431	\$4,215.00
University of Kentucky Health Care Lock Box 951326 Cleveland, OH 44193	\$3,558.39
University of Kentucky Office of Sponsored Projects 337 Peterson Service Building Lexington, KY 40508-0005	\$626,180.33
Pewee Valley Cemetary Company C/O B. Murphy 124 Tulip Ave Pewee Valley, KY 40056	\$1,440.95

(2) The claims listed below are for the payment of State Treasury checks payable to the persons or their personal representatives, and the firms listed, but not presented for payment within a period of five (5) years from the date of issuance of such check as required by KRS 41.370 and 413.120.

	<u>Payee</u>	<u>Treasury Fee</u>	<u>Total Check</u>
Check # Y13430692 dated December 10, 2002 Letitia Allen C/O Carolyn Coney Division of Child Support Accounting Branch 730 Schenkel Lane Frankfort, KY 40601	\$70.00	\$25.00	\$45.00
Check # T1352967 dated May 12, 1994 Kenneth P. Brown P.O. Box 4238 Campbellsville, KY 42719	\$48.63	\$25.00	\$23.63
Check # A7039232 dated March 1, 1995 Sharol Cain 580 County Road 1104 Fancy Farm, KY 42039	\$196.00	\$25.00	\$171.00
Check # Y10017237 dated April 5, 2001 Christie Collier C/O Carolyn Coney	\$80.00	\$25.00	\$55.00

Division of Child Support

Accounting Branch

730 Schenkel Lane

Frankfort, KY 40601

Check # E0979217 dated April 4, 1995	\$1,994.00	\$25.00	\$1,969.00
Eva Collins			
P.O. Box 514			
Monticello, KY 42633			
Check # T10983052 dated September 24, 2002	\$213.00	\$25.00	\$188.00
Dawn M. Davis			
1916 Deauville Drive			
Lexington, KY 40204-1310			
Check # T101881852 dated May 21, 2003	\$200.00	\$25.00	\$175.00
Harriet H. Finn			
10913 Fenway Glen Court			
Riverview, FL 33569			
Check # G12814207 dated August 28, 2001	\$288.32	\$25.0	\$263.32
Goodyear Tire & Rubber			
Department of Parks			
C/O Rob Richards			
500 Mero Street			
Frankfort, KY 40601			
Check # T11546390 dated March 20, 2003	\$150.00	\$25.00	\$125.00
Susan L. Guthier			
241 Evergreen Avenue			
Southgate, KY 41071-3151			
Check # T17305275 dated February 3, 2000	\$48.00	\$25.00	\$23.00
Hazel J. Hardin			
434 Southland Blvd.			
Louisville, KY 40217-1337			
Check # CS6007448 dated April 20, 1999	\$110.02	\$25.00	\$85.02
Randy Hearn			
P.O. Box 694			
Warsaw, KY 41095			
Check # Y10896877 dated September 10, 2001	\$222.00	\$25.00	\$197.00
Ann Holstein			
1869 Mount Vernon Drive			
Covington, KY 41011-3689			

Check # T18899428 dated March 27, 2001	\$143.00	\$25.00	\$118.00
Cassandra & Sterlin Isaac 5299 Big Branch Road Amburgey, KY 41773-8715			
Check # G105012359 dated April 1, 2003	\$246.00	\$25.00	\$221.00
Check # G104879126 dated March 1, 2003	\$246.00	\$25.00	\$221.00
Cassandram McNeil C/O Rebecca Hoover 275 East Main Street, 3 WC Frankfort, KY 40621			
Check # Y12674777 dated July 30, 2002	\$255.00	\$25.00	\$230.00
Kimberly L. Popowich 4405 Schoolhouse Road White Plains, KY 42464			
Check # T10992814 dated November 5, 2002	\$262.12	\$25.00	\$237.12
Edward A. Ramos 2000 Woodcrest Drive Independence, KY 41051			
Check # T3614483 dated June 4, 1996	\$143.00	\$25.00	\$118.00
Charles Roution 8014 Manslick Road Louisville, KY 40214-5563			
Check # G14098976 dated July 29, 2002	\$131.10	\$25.00	\$106.10
Scott County Arts Department of Parks C/O Rob Richards 500 Mero Street Frankfort, KY 40601			
Check # G13690594 dated April 2, 2002	\$110.32	\$25.00	\$85.32
Claude Smith, Jr. For Claude Smith Estate 1054 Idylwild Drive Richmond, KY 40475			
Check # T18054226 dated April 21, 2000	\$110.00	\$25.00	\$85.00
Andrew R. Stewart C/O Joan Ingram 1157 Powersville-Harrison County Road Brooksville, KY 41004			

Check # Y10916684 dated September 13, 2001	\$99.56	\$25.00	\$74.56
Dana Thomas 208 N. 37th Street Louisville, KY 40212-2320			
Check # E11892440 dated July 22, 2002	\$1,781.00	\$25.00	\$1,756.00
Shahram Tosifian 2936 Persimmon Place Fullerton, CA 92835			
Check # Y10725133 dated August 9, 2001	\$86.41	\$25.00	\$61.41
Lori Lawson Trison C/O Carolyn Coney Division of Child Support			
Check # T3273593 dated April 23, 1996	\$196.00	\$25.00	\$171.00
Silas E. Tutt 3190 Kentucky 191 Campton, KY 41301			
Check # G13230047 dated December 10, 2001	\$288.87	\$25.00	\$263.87
United Central Industrial Supply Attn: M. Pauline Belcher P.O. Box 8300 Bristol, VA 24203-8300			
Check # T0494793 dated April 30, 1982	\$67.60	\$25.00	\$42.60
Estate of Laurene Williams C/O Ray Williams 1057 State Route 381 Sedalia, KY 42079			
Check # C101434684 dated May 15, 2003	\$5,000.00	\$25.00	\$4,975.00
Estate of Nettie M. Estill C/O John Estill 278 Montgomery Avenue Versailles, KY 40383			
Check # G12535213 dated June 12, 2001	\$75.67	\$25.00	\$50.67
Bob Goodwin P.O. Box 110 Waldenburg, AR 72475			
Check # T11558393 dated March 21, 2003	\$194.00	\$25.00	\$169.00
Nicholas B. Bach 2502 Shining Water Drive #301			

Louisville, KY 40299

Check # T16882487 dated August 8, 2001	\$796.60	\$25.00	\$771.60
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Arkie Kinney

728 Greasy Creek Road

Shelbiana, KY 41562-8230

➔Section 2. The Finance and Administration Cabinet and the State Treasurer are authorized to pay the following listed claims from the following funds:

The Education and Workforce Development Cabinet is authorized to make payment from their Unemployment compensation Fund for state treasury checks payable to the persons or their personal representatives but not presented for payment within a period of five (5) years from the date of issuance of the checks, the amounts listed below:

	<u>Payee</u>	<u>Treasury Fee</u>	<u>Total Check</u>
Check # U15187112 dated October 23, 2001	\$682.00	\$25.00	\$657.00
Kris Calvert			
2341 Abbeywood Road			
Lexington, KY 40515-1259			
Check # U14618135 dated March 30, 2001	\$658.00	\$25.00	\$633.00
Julie A. Kelner			
16 Windsor Court			
Little Rock, AR 72212			
Check # U16110782 dated June 21, 2002	\$307.00	\$25.00	\$282.00
Check # U16222842 dated July 22, 2002	\$614.00	\$25.00	\$589.00
Check # U16319961 dated August 14, 2002	\$614.00	\$25.00	\$589.00
Joseph J. Schwering			
C/O Debbie Walsh			
275 East Main Street, 2-ED			
Frankfort, KY 40621			
Check # U17698452 dated August 11, 2003	\$614.00	\$25.00	\$589.00
Robert Smith			
2319 Alta Avenue			
Louisville, KY			

➔Section 3. Whereas the persons and companies named above have furnished in good faith the services, supplies, and materials enumerated, and the Commonwealth has received the same, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor, or upon its otherwise becoming law.

**Signed by the Governor March 20, 2009.**

## CHAPTER 26

(HB 185)

AN ACT relating to mine safety.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 352.220 is amended to read as follows:

For purposes of this section, "approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department for Natural Resources or accepted by a nationally or federally recognized testing laboratory or the Department of Labor Mine Safety and Health Administration; "suitable" means a design, material, or installation that meets the requirements of its intended use or that is accepted by a nationally or federally recognized testing laboratory or the Department of Labor Mine Safety and Health Administration.

(1) The following shall apply to underground installations:

- (a) Nonconductive or insulated materials shall be used when trailing cables or high voltage feeder cables are suspended;
- (b) Suitable circuit-interrupting devices shall be provided for all power circuits and equipment at the mine;
- (c) All power wires and cables shall be properly insulated and protected by proper installation or guarding;
- (d) Ground wires for circuits shall have a total cross-sectional area of not less than one-half (1/2) the power conductor;
- (e) Extra length or long trailing cables shall be spread out in long open loops or in a figure-eight configuration on a clean, well rock-dusted floor where the cable can be protected against mechanical injury, but cables suspended in long open loops shall be acceptable;
- (f) One (1) temporary splice may be made in any trailing cable. No temporary splice shall be made in a trailing cable within twenty-five (25) feet of the machine except cable reel equipment. Splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Splices made in cables shall provide continuity of all components;
- (g) Three-phase alternating-current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all the electrical equipment supplied power from that circuit;
- (h) The frames of hand-held electrically driven tools shall be properly grounded or double-insulated by design. The frames of all pumps shall be properly grounded. Hand-held tools and all pumps shall be properly protected by suitable fuses, circuit breakers, or other no less effective devices to provide the minimum overload and shortcircuit protection required by the department;
- (i) All underground high-voltage transmission cables shall be installed only in regularly inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work under or pass under them unless they are six and one-half (6-1/2) feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with other circuits. Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor, with one (1) or more ground conductors having a total cross-sectional area of not less than one-half (1/2) the power conductor, and with an insulated internal conductor not smaller than No. 10 (AWG) or an insulated external conductor not smaller than No. 8 (AWG) for the ground continuity check circuit. All cables shall be suitable for the current and voltage and shall be properly maintained;
- (j) Power circuits shall have suitable disconnecting devices and short-circuit protective devices at or near the supply end of the circuit. Suitable disconnecting devices shall be provided at the beginning of all branch circuits;
- (k) Underground transformer stations, battery charging stations, substations, rectifiers, and water pumps shall be housed in noncombustible structures or areas or be equipped with a suitable fire-suppression system.
  1. When a noncombustible structure or area is used, these installations shall be:
    - a. Ventilated with intake air that is coursed into a return air course or to the surface and that is not used to ventilate working places; or

- b. Ventilated with intake air that is monitored for carbon monoxide or smoke by an atmospheric monitoring system (AMS) installed and operated in a suitable manner. Monitoring of intake air ventilating battery charging stations shall be done with sensors not affected by hydrogen; or
    - c. Ventilated with intake air and equipped with sensors to monitor for heat, carbon monoxide, or smoke.
  2. The sensors used for monitoring shall de-energize power to the installation, activate a visual and audible alarm located outside of and on the intake side of the enclosure, and activate doors that will automatically close when any of the following occurs:
    - a. The temperature in noncombustible structure reaches one hundred sixty-five (165) degrees Fahrenheit;
    - b. The carbon monoxide concentration reaches ten (10) parts per million above the ambient level for the area; or
    - c. The optical density of smoke reaches 0.022 per meter.
  3. At least every thirty (30) days, sensors installed to monitor for carbon monoxide shall be calibrated with a known concentration of carbon monoxide and air sufficient to activate the closing door, or each smoke sensor shall be tested to determine that it functions correctly.
  4. When a fire suppression system is used, the installation shall be:
    - a. Ventilated with intake air that is coursed into a return air course or to the surface and that is not used to ventilate working places; or
    - b. Ventilated with intake air that is monitored for carbon monoxide or smoke by an atmospheric monitoring system installed and operated in a suitable manner.
  5. All monitoring systems used to monitor intake air ventilating battery charging stations under subparagraphs 1. and 4. of this paragraph shall be done with sensors not affected by hydrogen.
  6. This paragraph shall not apply to:
    - a. Rectifiers and power centers with transformers that either are dry-type or contain nonflammable liquid, if they are located at or near the section and are moved as the working section advances or retreats;
    - b. Submersible pumps;
    - c. Permissible pumps, and associated permissible switchgear;
    - d. Pumps located on or near the section that are moved as the working section advances or retreats; or
    - e. Small portable pumps. Underground stations containing transformers or circuit breakers filled with flammable oil shall be provided with door sills or their equivalent, which will confine the oil if leakage or rupture occurs, and shall be of fireproof construction. Underground transformers purchased after June 16, 1972, shall be air cooled or cooled with nonflammable liquid or inert gas. Portable power centers, portable transformers, and distribution centers which are essentially fireproof are not required to be placed on separate splits of air but shall be stationed in well ventilated places outby the last open crosscuts;
- (l) Electrically powered locomotives shall be provided with suitable electrical protective devices;
- (m) Suitable firefighting equipment shall be located at strategic points along the belt conveyor, and proper fire extinguishers shall be provided at the transfer points. The commissioner may prescribe any other safety measures for the prevention and combating of mine fires as they pertain to conveyor belts. Only approved flame resistant belting shall be taken into and used inside any mine, and all underground belt conveyors shall be provided with slippage and sequence switches and with start and stop controls at intervals not to exceed one thousand (1000) feet. The controls shall be properly installed and positioned so as to be readily accessible;

- (n) Communication wires and cables shall be adequately insulated and protected by proper installation or guarding;
  - (o) Telephone wires shall be provided with lightning arresters where the wires enter the mine and at the buildings on the surface;
  - (p) Insulating mats shall be placed in front of disconnecting devices and all electrical installations where required;
  - (q) Ground wires in trailing cables shall be tested weekly for open circuit and high resistance;
  - (r) Power circuits in tipples, buildings, cleaning plants, etc., and all underground electrical circuits shall be deenergized when not in use over a long period;
  - (s) All underground power circuits and electrical equipment shall be de-energized before work is done on the circuits and equipment except when necessary for troubleshooting or testing. When electrical work or major mechanical work is performed, a suitable disconnect providing visible evidence that the power is disconnected shall be locked open and a tag shall be posted by the individuals performing the work. Locks and tags shall be removed only by the persons who installed them, or if those persons are unavailable, by a person authorized by the operator. Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustment;
  - (t) Where electric circuits cross over or pass under belt conveyors the wiring shall be suitably protected; and
  - (u) Switch boxes, contactors, controllers, and all other similar devices shall be kept free of significant accumulations of combustible dust.
- (2) The following shall apply to trolley wires and trolley feeder wires:
- (a) On all haulage roads, landings, and partings where persons are required to regularly work or pass under bare power wires placed less than six and one-half (6-1/2) feet above the top of the rail, suitable protection shall be provided. This protection shall consist of channeling the roof, placing boards along the wires and extending below them, or the use of some other approved device that affords protection;
  - (b) All machine feed conductors shall be placed on suitable insulators which shall be so placed as to prevent the conductors coming in contact with combustible or conductive materials;
  - (c) When the machine or feed wires are carried in the same entry as the trolley wire, they shall be placed on the same side as the trolley wire, between the trolley wire and rib, and shall be protected from contact therewith. Positive feed wires crossing places where persons are required to travel shall be safely guarded or protected against persons coming in contact therewith, as required by paragraph (a) of this subsection;
  - (d) All trolley and positive feed wires shall be placed on opposite sides of track from refuge holes or necks of rooms when so ordered by the department, but wires, when protected as required by paragraph (a) of this subsection, may be placed across the necks of rooms. Switches or circuit breakers shall be provided to control the current at the mine and all important sections in the mine;
  - (e) Where track is used for the return circuit, at least one (1) side shall be bonded to the full length of the trolley wire installation. Cross-bonds shall be installed not to exceed two hundred (200) foot intervals along the track; and
  - (f) All mine locomotives shall be fused or otherwise protected at the switch or at the nip.
- (3) The following shall apply to surface installations:
- (a) High-voltage lines shall be at least twenty (20) feet above the ground where there is a possibility of contact by traffic passing underneath;
  - (b) Electrical circuits, wires, and cables shall be supported on insulators except when cables, which are of a design that can be safely used without insulators, are used;
  - (c) Lightning arresters shall be installed on all ungrounded, exposed power conductors and telephone wires entering a mine, regardless of voltage. Overload protection and disconnect switches of suitable sizes and

ratings approved by the department shall also be provided, except that they shall not be required of telephone wires;

- (d) Every metallic building in which electricity is used or connected with any circuit shall be effectively grounded;
  - (e) All transformer tanks shall be effectively grounded;
  - (f) Switch boxes, contactors, controllers, and all other similar devices shall be kept free of significant accumulations of combustible dust that create a fire hazard;
  - (g) Surface transformer stations shall be housed or fenced in when lower than fifteen (15) feet above the earth, and the fences shall be a minimum of six (6) feet in height; and
  - (h) All surface power circuits and electrical equipment shall be de-energized before work is done on the circuits and equipment except when necessary for troubleshooting or testing. When electrical work or major mechanical work is performed, a suitable disconnect providing visible evidence that the power is disconnected shall be locked open and a tag shall be posted by the individuals performing the work. Locks and tags shall be removed only by persons who installed them or, if those persons are unavailable, by a person authorized by the operator. Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments. When disconnects for stationary low and medium voltage equipment that do not provide visual evidence that the power is disconnected are used, an adequately rated voltage detector shall be used to test each phase conductor or circuit part to verify they are de-energized before any work is performed. When practical, confirmation that the voltage detector is operating satisfactorily shall be made before each test.
- (4) (a) Notwithstanding any provisions of subsection (1), (2), or (3) of this section, the department may authorize the construction, maintenance, operation, or conducting of any activity regulated by this section, to be constructed, maintained, operated, or conducted in a different manner than specified in any provision of subsection (1), (2), or (3) of this section, when scientific or engineering information is made available to the department substantially indicating that the different manner would afford equal or greater protection and safety than the manner required in subsection (1), (2), or (3) of this section; and
- (b) The department may prescribe administrative regulations with respect to the aboveground or underground installations in connection with any mine operation when information is made available indicating that regulation is reasonably necessary to prevent injury to, or loss of, life and property.
- (5) All electrical work shall be performed by a certified electrician, *or an electrical trainee under the direct supervision of a certified electrician*, at all underground mines and surface mines operating draglines or highwall miners.

**Signed by the Governor March 20, 2009.**

## CHAPTER 27

### (HB 284)

AN ACT relating to KARDA.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 11.170 is amended to read as follows:

- (1) The Kentucky Agriculture Resources Development Authority (KARDA) is created. KARDA shall serve to unify the efforts of agricultural groups working on behalf of farmers and agribusiness and shall be attached to the Office of the Governor for administrative purposes.
- (2) The functions of KARDA shall be to:
  - (a) Advise the Governor and other state officials on economic development initiatives to improve the farm economy;
  - (b) Conduct long-range planning and provide continuity for agriculture and agribusiness;

- (c) Work with the Executive Branch and the Legislative Branch on legislation, policies, and programs with specific emphasis on increasing farm income, ~~and~~ strengthening rural communities, **and ensuring the rights of all farmers; and**
- (d) ~~Develop market potentials and encourage the "value added" concept to the full extent of its potential;~~
- (e) ~~Fully develop existing enterprises and identify, explore, and evaluate new enterprise opportunities; and~~
- (~~f~~) Improve the flow of information from the federal and state governments and the university system to agricultural commodity organizations, their members, and the farm community in general.
- (3) The membership of KARDA shall consist of **twenty-three (23)** ~~twenty-seven (27)~~ members as follows:
- (a) The Governor or **the Governor's** ~~his~~ designee;
- (b) Dean, College of Agriculture, University of Kentucky, **or the Dean's designee**;
- (c) Commissioner of Agriculture **or the Commissioner's designee**;
- (d) Chair, Senate Agriculture ~~and Natural Resources~~ Committee;
- (e) Chair, House Agriculture and Small Business Committee;
- (f) President, Kentucky Farm Bureau **or the president's** ~~his~~ designee;
- (g) **Chair, Kentucky Agriculture Council or the chair's designee** ~~President, Kentucky National Farmers Organization or his designee~~;
- (h) **One (1) member appointed by the Governor from a list of three (3) large animal veterinarians nominated by the Kentucky Veterinary Medical Association** ~~President, Kentucky Bankers Association or his designee~~;
- (i) Seven (7) members appointed by the Governor as follows: one (1) each from the seven (7) **commodity-specific organizations that officially represent the agricultural commodities** ~~agriculture commodity organizations~~ with the greatest cash receipts from farm marketings as reported by the Kentucky Agricultural Statistics Service **by December 1 for the previous calendar year. Each of the commodity-specific organizations may submit its nomination to the Governor by March 1. If more than one (1) commodity-specific organization represents a commodity, each organization may submit a nominee, but the Governor shall determine the KARDA representative for that commodity** ~~. The commodity organizations' representatives shall be elected at the organizations' annual meeting of membership. The election shall be conducted at the annual meeting of membership immediately prior to the expiration of the term of that organization's representative~~;
- (j) Four (4) **members appointed** ~~appointees~~ by the Governor **as follows: any Kentucky university offering a four (4) year agricultural degree or any agribusiness or agricultural association which is registered with the Secretary of State may submit one (1) nominee to the Governor by March 1. The Governor shall determine the four (4) members from the nominees submitted** ~~from the following organizations, each of whom shall submit one (1) name for consideration: Kentucky Agriculture Communicators, Kentucky Aquaculture Association, Kentucky Association of Conservation Districts, Kentucky Beekeepers Association, Kentucky Farm and Power Equipment Dealers Association, Kentucky Feed and Grain Dealers Association, Kentucky Fertilizer and Agriculture Chemical Association, Kentucky Forage and Grassland Council, Kentucky Forest Industry Association, Kentucky Ginseng Association, Kentucky Milk Goat Association, Kentucky Poultry Federation, Kentucky Seed Improvement Association, Kentucky Sheep and Wool Producers Association, Kentucky State Horticultural Society, Kentucky Sweet Sorghum Producers and Processors Association, Kentucky Vegetable Growers Association, Kentucky Vineyard Society, and Kentucky Young Farmers Association~~; and
- (k) **Four (4)** ~~Eight (8)~~ members at large selected and appointed by the Governor. ~~;~~
- (4) ~~(1)~~ Initial terms of members, other than those serving ex officio, shall be staggered to provide continuity. Thereafter, terms **of appointed members** shall be for four (4) years, **except for the representatives of the seven (7) commodity groups identified in subsection (3)(i) of this section, who shall serve one (1) year terms.**

- (5)~~(4)~~ The Governor shall designate one (1) of the members as chair ~~whose term shall be concurrent with that of the Governor~~. KARDA may elect by majority vote a vice chair and other officers as may be deemed necessary.
- (6)~~(5)~~ No member of KARDA shall receive a salary, fee, or other remuneration for services as a member of KARDA, but each member shall be reimbursed for ordinary travel expenses, including meals and lodging, incurred in the performance of duties incident to implementation of the provisions of this section.
- (7)~~(6)~~ KARDA shall meet at the call of the Governor or the chair ~~but not less often than four (4) times during each calendar year~~. A majority of the members ~~appointed to KARDA~~ shall constitute a quorum.
- (8)~~(7)~~ KARDA shall use, so far as practical, and subject to the approval of the Governor, ~~secretarial and clerical~~ staff of the Governor's Office to carry out the provisions of this section.

➔Section 2. To carry out the changes to the KARDA board as provided by Section 1 of this Act:

- (1) The chair of the Kentucky Agriculture Council shall replace the President of the Kentucky National Farmers Organization, as required under subsection (3)(g) of Section 1 of this Act, on the effective date of this Act;
- (2) The Governor shall, within 30 days of the effective date of this Act:
  - (a) Appoint a large animal veterinarian to replace the President of the Kentucky Bankers Association, as required under subsection (3)(h) of Section 1 of this Act;
  - (b) Appoint seven members representing commodity-specific organizations to replace the existing members representing agriculture commodity organizations, as required under subsection (3)(i) of Section 1 of this Act, whose terms shall expire on June 30, 2010;
  - (c) Appoint four members representing Kentucky universities, agribusinesses, or agricultural associations to replace the existing members representing agricultural organizations, as required by subsection (3)(j) of Section 1 of this Act, and who shall fill the unexpired terms of the existing members; and
  - (d) Appoint four members at large, as required by subsection (3)(k) of Section 1 of this Act; and
- (3)
  - (a) The Governor shall determine the lengths of the terms of the members appointed in accordance with subsection (2)(a) and (d) of this section in order to provide continuity of the staggered terms of the membership.
  - (b) The members appointed by the Governor in accordance with subsection (2)(b), (c), and (d) of this section may be existing members. It is not intended that existing members may not be appointed if they otherwise meet the qualifications required by Section 1 of this Act.

**Signed by the Governor March 20, 2009.**

## CHAPTER 28

### (SB 8)

AN ACT relating to donations.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS 367.170 TO 367.300 IS CREATED TO READ AS FOLLOWS:

- (1)
  - (a) *As used in this section, "charitable or civic organization" means a person determined by the Internal Revenue Service or the Kentucky Department of Revenue to be a tax-exempt organization.*
  - (b) *"Charitable or civic organization" does not include a person or organization operating for profit.*
- (2) *A person that is not a charitable or civic organization shall not place or maintain a receptacle in public view for the purpose of collecting donated clothing, household items, and other items for future resale unless the person places on the receptacle a permanent label or sign that includes the following information:*
  - (a) *A statement that reads as follows: "Donations made here support a for-profit business, do not qualify as a charitable contribution, and are not tax-deductible."; and*

(b) *The person's name and phone number or e-mail address.*

*The sign or label shall be in the largest lettering that the receptacle will accommodate, but shall not be less than three (3) inches in height and one-half (1/2) inch in width. The sign or label shall be placed immediately below the opening in the box used to deposit donations.*

- (3) *A violation of this section shall be an unlawful act under KRS 367.170.*
- (4) *The county attorney shall have concurrent jurisdiction with the Attorney General in enforcing this section, and shall have the powers granted the Attorney General under KRS 367.110 to 367.300 if he or she assumes jurisdiction. Actions brought under KRS 367.990(1) and (2) by the county attorney shall be in the name of the county and any penalties imposed shall be paid to the county.*

Signed by the Governor March 20, 2009.

## CHAPTER 29

### (SB 20)

AN ACT relating to the Kentucky Infrastructure Authority.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 224A.030 is amended to read as follows:

- (1) There is hereby created the Kentucky Infrastructure Authority, which authority shall be a body corporate and politic, constituting a public corporation and a governmental agency and instrumentality of the state. All powers, duties, and obligations of the Kentucky Pollution Abatement and Water Resources Finance Authority shall be transferred March 31, 1988, to the Kentucky Infrastructure Authority. The affairs of the authority shall be managed and carried out by a board consisting of ***eleven (11)***~~nine (9)~~ members. The secretaries of the Economic Development, Finance and Administration, and Environmental and Public Protection Cabinets; the executive director of the Public Service Commission; and the commissioner of the Governor's Office for Local Development shall serve as ex officio members of the authority. The secretaries, the executive director, and the commissioner may designate alternates.~~On or before August 1, 2000,~~ The Governor shall additionally appoint ***six (6)***~~five (5)~~ at-large members. One (1) member shall be selected from a list of three (3) nominees submitted by the Kentucky Association of Counties, one (1) member selected from a list of three (3) nominees submitted by the Kentucky League of Cities, one (1) member selected from a list of three (3) nominees submitted by the Kentucky Rural Water Association, one (1) member representing for-profit private water companies,~~and~~ one (1) member selected from a list of three (3) nominees submitted by the Kentucky section of the American Water Works Association, ***and one (1) member selected from a list of three (3) nominees submitted by the Kentucky Municipal Utilities Association.***~~The at-large members shall serve as follows: two (2) shall serve a term ending June 30, 2004; two (2) shall serve a term ending June 30, 2003; and one (1) shall serve a term ending June 30, 2002.~~ As the terms of the at-large members expire, the Governor shall appoint successors for terms of four (4) years and until their successors are appointed. The members shall constitute the Kentucky Infrastructure Authority, with power in that name to contract and be contracted with, sue and be sued, have and use a corporate seal, and exercise, in addition to the powers and functions specifically stated in this chapter, all of the usual powers of private corporations to the extent that the ***powers***~~same~~ are not inconsistent with specifically enumerated powers of the authority. In the carrying out of its purposes and the exercise by it of the powers conferred by this chapter, the authority is deemed and declared to be performing essential governmental functions and public purposes of the state.
- (2) The members of the authority shall receive no compensation for their services in ***their official***~~said~~ capacity but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as ***authority***~~such~~ members.
- (3) ***Six (6)***~~Five (5)~~ members of the authority shall constitute a quorum for the transaction of business, and in the absence of a quorum, one (1) or more members may adjourn from time to time until a quorum is convened. The members of the authority shall choose from their ranks a chair and a vice chair. The authority shall elect a secretary and a treasurer who shall not be members of the authority, each of whom shall serve at the pleasure of the authority and shall receive compensation as may be determined by the authority.
- (4) (a) The authority shall, for administrative purposes, be attached to the Governor's Office for Local Development, which shall provide any office space required by the authority.

- (b) The secretary of the authority shall at all times maintain therein complete records of all of the authority's actions and proceedings which shall constitute public records open to inspection at all reasonable times.

➔Section 2. On or before August 1, 2009, the Governor shall appoint the member representing the Kentucky Municipal Utilities Association to the Kentucky Infrastructure Authority in accordance with subsection (1) of Section 1 of this Act, who shall serve a term ending June 30, 2012. Following the initial appointment, appointments of this member shall be for a term of four (4) years or until a successor is appointed and qualified in accordance with subsection (1) of Section 1 of this Act.

**Signed by the Governor March 20, 2009.**

## CHAPTER 30

(SB 27)

AN ACT relating to brownfield redevelopment and making an appropriation therefor.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *The brownfield redevelopment fund shall be established in the State Treasury as an interest bearing restricted fund and shall be administered by the cabinet.*
- (2) *The fund shall be a dedicated fund, and all moneys in the fund shall be used solely to provide financial assistance to governmental agencies to perform brownfield assessments, corrective action, and demolition or other similar actions necessary to prepare the property for a beneficial use.*
- (3) *The financial assistance which may be provided to governmental agencies from the fund shall be limited to the following forms:*
  - (a) *Grants; and*
  - (b) *Loans, that are made at or below market interest rates, including interest free loans, at terms not to exceed ten (10) years with all payments of principal and interest on all loans credited to the fund.*
- (4) *The cabinet may promulgate administrative regulations setting forth procedures for providing financial assistance as set forth in subsection (3) of this section.*
- (5) *The brownfield redevelopment fund shall be established, maintained, and credited with funds received from appropriations of the General Assembly, repayments of loans and interest thereon, interest derived from fund principal, grants or donations received, and payments made to the fund for any lawful purpose. Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of a fiscal year shall not lapse, but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this section.*
- (6) *The cabinet may enter into any necessary or required agreement with federal or state agencies or persons to carry out the provision of this section. All state agencies shall cooperate with the cabinet and share information with the cabinet as appropriate.*
- (7) *Any moneys in the fund are hereby appropriated for the purposes set forth in this section.*

**Signed by the Governor March 20, 2009.**

## CHAPTER 31

(SB 39)

AN ACT relating to students of civilian military employees.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 156 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any other statutes to the contrary, students of civilian military employees shall be afforded the same rights as students of military families under KRS 156.730 if the parents are required to move to perform their job responsibilities resulting in the students having to change schools.*
- (2) *As used in this section, "student" means the child of a civilian military employee for whom the local education agency receives public funding and who is formally enrolled in kindergarten through twelfth grade.*

**Signed by the Governor March 20, 2009.**

## CHAPTER 32

### (SB 41)

AN ACT relating to agriculture.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 11.170 is amended to read as follows:

- (1) The Kentucky Agriculture Resources Development Authority (KARDA) is created. KARDA shall serve to unify the efforts of agricultural groups working on behalf of farmers and agribusiness and shall be attached to the Office of the Governor for administrative purposes.
- (2) The functions of KARDA shall be to:
  - (a) Advise the Governor and other state officials on economic development initiatives to improve the farm economy;
  - (b) Conduct long-range planning and provide continuity for agriculture and agribusiness;
  - (c) Work with the Executive Branch and the Legislative Branch on legislation, policies, and programs with specific emphasis on increasing farm income and strengthening rural communities;
  - (d) Develop market potentials and encourage the "value-added" concept to the full extent of its potential;
  - (e) Fully develop existing enterprises and identify, explore, and evaluate new enterprise opportunities; and
  - (f) Improve the flow of information from the federal and state governments and the university system to agricultural commodity organizations, their members, and the farm community in general.
- (3) The membership of KARDA shall consist of twenty-seven (27) members as follows:
  - (a) The Governor or his designee;
  - (b) Dean, College of Agriculture, University of Kentucky;
  - (c) Commissioner of Agriculture;
  - (d) Chair, Senate Agriculture ~~and Natural Resources~~ Committee;
  - (e) Chair, House Agriculture and Small Business Committee;
  - (f) President, Kentucky Farm Bureau or his designee;
  - (g) President, Kentucky National Farmers Organization or his designee;
  - (h) President, Kentucky Bankers Association or his designee;
  - (i) Seven (7) members appointed by the Governor as follows: one (1) each from the seven (7) agriculture commodity organizations with the greatest cash receipts from farm marketings as reported by the Kentucky Agricultural Statistics Service. The commodity organizations' representatives shall be elected at the organizations' annual meeting of membership. The election shall be conducted at the annual meeting of membership immediately prior to the expiration of the term of that organization's representative;
  - (j) Four (4) appointees by the Governor from the following organizations, each of whom shall submit one (1) name for consideration: Kentucky Agriculture Communicators, Kentucky Aquaculture Association, Kentucky Association of Conservation Districts, Kentucky Beekeepers Association, Kentucky Farm and

Power Equipment Dealers Association, Kentucky Feed and Grain Dealers Association, *Agribusiness Association of Kentucky* [~~Kentucky Fertilizer and Agriculture Chemical Association~~], Kentucky Forage and Grassland Council, Kentucky Forest Industry Association, Kentucky Ginseng Association, Kentucky Milk Goat Association, Kentucky Poultry Federation, Kentucky Seed Improvement Association, Kentucky Sheep and Wool Producers Association, Kentucky State Horticultural Society, Kentucky Sweet Sorghum Producers and Processors Association, Kentucky Vegetable Growers Association, Kentucky Vineyard Society, and Kentucky Young Farmers Association; and

- (k) Eight (8) members at large selected and appointed by the Governor;
  - (l) Initial terms of members, other than those serving ex officio, shall be staggered to provide continuity. Thereafter, terms shall be for four (4) years.
- (4) The Governor shall designate one (1) of the members as chair whose term shall be concurrent with that of the Governor. KARDA may elect by majority vote a vice chair and other officers as may be deemed necessary.
  - (5) No member of KARDA shall receive a salary, fee, or other remuneration for services as a member of KARDA, but each member shall be reimbursed for ordinary travel expenses, including meals and lodging, incurred in the performance of duties incident to implementation of the provisions of this section.
  - (6) KARDA shall meet at the call of the Governor or the chair, but not less often than four (4) times during each calendar year. A majority of the members appointed to KARDA shall constitute a quorum.
  - (7) KARDA shall use, so far as practical, and subject to the approval of the Governor, secretarial and clerical staff of the Governor's Office to carry out the provisions of this section.

➔Section 2. KRS 248.510 is amended to read as follows:

- (1) The Kentucky Tobacco Research Board is hereby created. The board shall be composed of thirteen (13) voting members and one (1) nonvoting member as follows:
  - (a) Ten (10) permanent members who shall be the following officeholders or shall be designated by the following organizations: the Kentucky Farm Bureau Federation; the Kentucky Innovations Commission; the commissioner of the Kentucky Department of Agriculture; the dean of the University of Kentucky College of Agriculture; the Burley Growers Cooperative Association; the Council for Burley Tobacco; the Dark Fired Tobacco Association; the Kentucky Science and Technology Corporation; the chairman of the Senate Committee on Agriculture [~~and Natural Resources~~]; and the chairman of the House Committee on *Agriculture* [~~Agricultural~~] and Small Business. Each officeholder and organization shall designate an alternate who is authorized to serve when the member cannot be present at a meeting.
  - (b) Three (3) members at large, at least one (1) of whom is a tobacco farmer in Kentucky and at least one (1) of whom has research and development experience in the public or private sector, who shall be appointed by the Governor with the advice and consent of the Legislative Research Commission.
  - (c) One (1) nonvoting member from the University of Kentucky, who shall be the University of Kentucky Vice President for Research, or the Vice President's designee. The nonvoting member of the board may be counted in determining a quorum, but the nonvoting member shall not vote on matters before the board.
- (2) No member of the board shall receive any salary, fee, or other remuneration for his services as a member of the board but each member shall be reimbursed for his ordinary travel expenses, including meals and lodging, incurred in the performance of his duties incident to implementation of the provisions of KRS 248.510 to 248.570.
- (3) The term of the ten (10) members designated in paragraph (a) of subsection (1) of this section shall not change but they shall be permanent members in terms of the organizations and offices named. At-large members and the tobacco industry member shall serve two (2) year terms.
- (4) The board shall elect, by a majority vote of the thirteen (13) voting members, a chairman and a vice chair. The chairman shall be the presiding officer of the board, shall preside at all meetings, and coordinate the functions and activities of the board. The chairman shall be elected or reelected annually and shall be a permanent member or an at-large member of the board. The vice chair shall conduct meetings in the absence of the chairman. The board shall have such other organization as deemed necessary and approved by the board.

- (5) Meetings of the board shall be held at least quarterly but may be held more frequently as deemed necessary subject to call by the chairman or by request of a majority of the board members. Board meetings shall concern, among other things, policy matters relating to research projects and programs, research progress reports, authorization of projects and financial plans, and such other matters as necessary to carry out the intent of KRS 248.510 to 248.570.
- (6) Seven (7) members of the board shall constitute a quorum for doing business. Each member shall have one (1) vote and a majority vote of the members present shall control on all questions.

➔Section 3. KRS 260.857 is amended to read as follows:

The Kentucky Industrial Hemp Commission is created and is attached to the Department of Agriculture for administrative purposes. The membership of the commission shall consist of at least seventeen (17) members as follows:

- (1) The Speaker of the House of Representatives or the Speaker's designee;
- (2) The President of the Senate or the President's designee;
- (3) The chair of the Senate Agriculture ~~and Natural Resources~~ Committee;
- (4) The chair of the House Agriculture and Small Business Committee;
- (5) The Commissioner of the Department of Agriculture or the Commissioner's designee;
- (6) The commissioner of the Department of Kentucky State Police or the commissioner's designee;
- (7) The executive director of the Governor's Office of Agricultural Policy or the executive director's designee;
- (8) The chairs of the agriculture departments at the Kentucky university or universities where the industrial hemp research program is to be established;
- (9) The president of the Kentucky Hemp Growers Cooperative Association;
- (10) The president of the Kentucky Sheriffs' Association;
- (11) The president of the Kentucky Association of Chiefs of Police; and
- (12) Six (6) members, three (3) appointed by the Speaker of the House and three (3) by the President of the Senate, representing the following interests:
  - (a) Kentucky farmers with an interest in growing industrial hemp;
  - (b) Retailers of industrial hemp products;
  - (c) Wholesalers of industrial hemp products; and
  - (d) Manufacturers of industrial hemp products.

**Signed by the Governor March 20, 2009.**

### CHAPTER 33

#### (SB 46)

AN ACT relating to supplemental payments to local governments for qualified professional firefighters and declaring an emergency.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 95A.210 is amended to read as follows:

As used in KRS 95A.200 to 95A.300, unless the context otherwise requires:

- (1) "Commission" means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.
- (2) "Fund" means Firefighters Foundation Program Fund.

- (3) "Local government" means any city, ~~or~~ county, **urban-county government, charter county government, unified local government, consolidated local government,** or any combination thereof ~~for urban-county government~~ of the Commonwealth.
- (4) "Professional firefighter" means any member of a paid municipal fire department organized under KRS Chapter 95, **67A, or 67C,** ~~or~~ a fire protection district organized under KRS Chapter 75, or a county fire department created pursuant to KRS Chapter 67.
- (5) **"Scheduled overtime" means work by a professional firefighter in excess of forty (40) hours per week which regularly recurs as part of an established work schedule.**
- (6) **"Unscheduled overtime" means work by a professional firefighter in excess of forty (40) hours per week which does not regularly recur as part of an established work schedule.**
- (7) **"Established work schedule" means a work schedule adopted by or required of a local government setting a recurring pattern for time on and off duty for professional firefighters employed by the local government. An established work schedule includes but is not limited to a schedule of twenty-four (24) consecutive hours on duty, followed by forty-eight (48) consecutive hours off duty.**

➔Section 2. KRS 95A.250 is amended to read as follows:

- (1) (a) Beginning July 1, 1982, an eligible local government shall be entitled to receive annually a supplement of two thousand seven hundred fifty dollars (\$2,750) for each qualified professional firefighter it employs, and beginning on July 1, 1999, an annual supplement of three thousand dollars (\$3,000) for each qualified professional firefighter it employs, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan, or to a plan qualified under Section 401(a) or Section 457 of the Internal Revenue Code of 1954 as amended.~~;~~
- (b) ~~provided that~~ The employer's contribution ~~on the supplement~~ to any of these plans **on the supplement** shall not exceed ~~that amount which is required of employers under the County Employees Retirement System pursuant to KRS Chapter 78, to which the officer belongs, but no more than~~ the required employer's contribution to the County Employees Retirement System **pursuant to KRS Chapter 78 for the hazardous duty category.** ~~In the case of County Employees Retirement System membership,~~ The pension contribution on the supplement shall be paid whether the **professional firefighter entered** ~~officer enters~~ the system under hazardous duty coverage or nonhazardous coverage.
- (c) The local unit of government shall pay the amount received for retirement coverage to the appropriate retirement system to cover the required employer contribution on the ~~pay~~ supplement.
- (d) Should the foundation program funds be insufficient to pay employer contributions to the system, then the total amount available for pension payments shall be prorated to each eligible government so that each receives the same percentage of required pension costs attributable to the ~~cash salary~~ supplement.
- (2) (a) Each qualified professional firefighter, whose local government receives a supplement pursuant to subsection (1)(a) of this section, shall **receive distribution of the supplement from** ~~be paid by~~ that local government **in twelve (12) equal monthly installments with his or her pay for the last pay period of each month. The monthly distribution shall be calculated by dividing the supplement amount set forth in subsection(1)(a) of this section by twelve (12)** ~~the supplement which his qualifications brought to the local government. The supplement paid each qualified firefighter shall be in addition to his regular salary~~.
- (b) **The supplement disbursed to a qualified professional firefighter pursuant to this section shall not be considered "wages" as defined by subsection (1)(c)1. of Section 4 of this Act and shall not be included in the hourly wage rate for calculation of overtime pursuant to Section 5 of this Act for scheduled overtime. The supplement shall be included in the hourly wage rates for calculation of overtime for unscheduled overtime pursuant to Section 5 of this Act.**
- (c) **To determine the addition to the hourly wage rate for calculation of overtime on unscheduled overtime, the annual supplement shall be divided by two thousand eighty (2,080). The overtime rate for unscheduled overtime shall be calculated by adding the quotient, which is the amount of the annual supplement divided by two thousand eighty (2,080), to the hourly wage rate and multiplying the total by one and one-half (1.5). The enhanced overtime rate shall be paid only for unscheduled**

*overtime. Scheduled overtime shall be paid at one and one-half (1.5) times the regular hourly wage rate, excluding the supplement.*

(3) Beginning July 1, 2006:

- (a) The Kentucky Community and Technical College System shall be entitled to receive annually a supplement equal to the amount determined in subsection (1) of this section for each Kentucky fire and rescue training coordinator employed by the Kentucky Community and Technical College System who meets the qualifications for individual firefighters required in KRS 95A.230, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan; and
- (b) The Department of Military Affairs shall be entitled to receive annually a supplement equal to the amount determined in subsection (1) of this section for each civilian firefighter employed by the Department of Military Affairs who meets the qualifications for individual firefighters required in KRS 95A.230, plus an amount equal to the required employer's contribution on the supplement to the defined benefit pension plan.

Each fire and rescue training coordinator employed by the Kentucky Community and Technical College System and each civilian firefighter employed by the Department of Military Affairs, whose employer receives a supplement pursuant to this subsection, shall **receive distribution from** ~~be paid by~~ that employer **of** the supplement which his or her qualifications brought to the employer. The **supplement distributed** ~~supplements paid~~ shall be in addition to his or her regular salary.

➔Section 3. KRS 95A.260 is amended to read as follows:

(1) Funds made available to local governments shall be received, held and expended in accordance with the provisions of KRS 95A.200 to 95A.300, any rules and regulations issued by the commission, and the following specific restrictions:

- (a) Funds provided shall be used only as a **supplemental distribution** ~~cash salary supplement~~ to firefighters, and for payments to the defined benefit pension plan to which the firefighter belongs to cover retirement costs on the **supplemental distribution** ~~cash salary supplement~~.
- (b) Funds provided shall be **distributed** ~~used~~ only to ~~compensate~~ firefighters who have complied with subsections (3) and (4) of KRS 95A.230.
- (c) Each firefighter shall ~~be entitled to~~ receive **distribution of** the state supplement which his **or her** qualifications brought to the local government.
- (d) Funds shall not be used to supplement existing salaries or as a substitute for normal salary increases periodically due to firefighters.

(2) This section shall not apply to funds expended pursuant to KRS 95A.240(3).

➔Section 4. KRS 337.010 is amended to read as follows:

(1) As used in this chapter, unless the context requires otherwise:

- (a) "Executive director" means the executive director of the Office of Workplace Standards under the direction and supervision of the commissioner of the Department of Labor;
- (b) "Office" means the Office of Workplace Standards in the Department of Labor;
- (c) **1.** "Wages" includes any compensation due to an employee by reason of his employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy. The wages shall be payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to the allowances made in this chapter;
- 2.** *For the purposes of calculating hourly wage rates for scheduled overtime for professional firefighters, as defined in subsection (5) of Section 1 of this Act, "wages" shall not include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund. For the purposes of calculating hourly wage rates for unscheduled overtime for professional firefighters, as defined in subsection (6) of Section 1 of this Act, "wages" shall include the distribution to qualified professional*

***firefighters by local governments of supplements received from the Firefighters Foundation Program Fund;***

- (d) Employer" is any person, either individual, corporation, partnership, agency, or firm who employs an employee and includes any person, either individual, corporation, partnership, agency, or firm acting directly or indirectly in the interest of an employer in relation to an employee; and
  - (e) "Employee" is any person employed by or suffered or permitted to work for an employer.
- (2) As used in KRS 337.275 to 337.325, 337.345, and KRS 337.385 to 337.405, unless the context requires otherwise:
- (a) "Employee" is any person employed by or suffered or permitted to work for an employer, but shall not include:
    1. Any individual employed in agriculture;
    2. Any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as the terms are defined by administrative regulations of the executive director;
    3. Any individual employed by the United States;
    4. Any individual employed in domestic service in or about a private home. The provisions of this section shall include individuals employed in domestic service in or about the home of an employer where there is more than one (1) domestic servant regularly employed;
    5. Any individual classified and given a certificate by the executive director showing a status of learner, apprentice, worker with a disability, sheltered workshop employee, and student under administrative procedures and administrative regulations prescribed and promulgated by the executive director. This certificate shall authorize employment at the wages, less than the established fixed minimum fair wage rates, and for the period of time fixed by the executive director and stated in the certificate issued to the person;
    6. Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than ninety-five thousand dollars (\$95,000) for the five (5) preceding years exclusive of excise taxes at the retail level or if the employee is the parent, spouse, child, or other member of his employer's immediate family;
    7. Any individual employed as a baby-sitter in an employer's home, or an individual employed as a companion by a sick, convalescing, or elderly person or by the person's immediate family, to care for that sick, convalescing, or elderly person and whose principal duties do not include housekeeping;
    8. Any individual engaged in the delivery of newspapers to the consumer;
    9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A, 30A, and 18A provided that the secretary of the Personnel Cabinet shall have the authority to prescribe by administrative regulation those emergency employees, or others, who shall receive overtime pay rates necessary for the efficient operation of government and the protection of affected employees;
    10. Any employee employed by an establishment which is an organized nonprofit camp, religious, or nonprofit educational conference center, if it does not operate for more than seven (7) months in any calendar year;
    11. Any employee whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private, nonprofit childcaring facilities licensed by the Cabinet for Health and Family Services under KRS 199.640 to 199.670; or
    12. Any individual whose function is to provide twenty-four (24) hour residential care in his or her own home as a family caregiver and who is approved to provide family caregiver services to an adult with a disability through a contractual relationship with a community mental health-mental retardation board established under KRS 210.370 to 210.460, or is certified or licensed by the Cabinet for Health and Family Services to provide adult foster care.

- (b) "Agriculture" means farming in all its branches, including cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural or horticultural commodity; raising of livestock, bees, furbearing animals, or poultry; and any practice, including any forestry or lumbering operations, performed on a farm in conjunction with farming operations, including preparation and delivery of produce to storage, to market, or to carriers for transportation to market;
  - (c) "Gratuity" means voluntary monetary contribution received by an employee from a guest, patron, or customer for services rendered;
  - (d) "Tipped employee" means any employee engaged in an occupation in which he customarily and regularly receives more than thirty dollars (\$30) per month in tips; and
  - (e) "U.S.C." means the United States Code.
- (3) As used in KRS 337.505 to 337.550, unless the context requires otherwise:
- (a) "Construction" includes construction, reconstruction, improvement, enlargement, alteration, or repair of any public works project by contract fairly estimated to cost more than two hundred fifty thousand dollars (\$250,000). No public works project, if procured under a single contract and subject to the requirements of this section, may be divided into multiple contracts of lesser value to avoid compliance with the provisions of this section;
  - (b) "Contractor" and "subcontractor" include any superintendent, foreman, or other authorized agent of any contractor or subcontractor who is in charge of the construction of the public works or who is in charge of the employment or payment of the employees of the contractor or subcontractor who are employed in performing the work to be done or being done by the contractor or subcontractor under the particular contract with any public authority;
  - (c)
    1. "Locality" shall be determined by the executive director. The executive director may designate more than one (1) county as a single locality, but if more than one (1) county is designated, the multicounty locality shall not extend beyond the boundaries of a state Senatorial district. The executive director shall not designate less than an entire county as a locality. If there is not available in the locality a sufficient number of competent, skilled laborers, workmen, and mechanics to efficiently and properly construct the public works, "locality" shall include any other locality nearest the one in which the work of construction is to be performed and from which such available skilled laborers, workmen, and mechanics may be obtained in sufficient number to perform the work; and
    2. "Locality" with respect to contracts advertised or awarded by the Transportation Cabinet of this state shall be determined by the secretary of the Transportation Cabinet. The secretary may designate any number of counties as constituting a single locality. The secretary may also designate all counties of the Commonwealth as a single locality, but he shall not designate less than an entire county as a locality;
  - (d) "Public authority" means any officer, board, or commission of this state, or any political subdivision or department thereof in the state, or any institution supported in whole or in part by public funds, including publicly owned or controlled corporations, authorized by law to enter into any contract for the construction of public works and any nonprofit corporation funded to act as an agency and instrumentality of the government agency in connection with the construction of public works, and any "private provider", as defined in KRS 197.500, which enters into any contract for the construction of an "adult correctional facility", as defined in KRS 197.500; and
  - (e) "Public works" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, and all other structures or work, including "adult correctional facilities", as defined in KRS 197.500, constructed under contract with any public authority.
- (4) If the federal government or any of its agencies furnishes by loans or grants any part of the funds used in constructing public works, and if the federal government or its agencies prescribe predetermined prevailing minimum wages to be paid to mechanics, workmen, and laborers employed in the construction of the public works, and if KRS 337.505 to 337.550 is also applicable, those wages in each classification which are higher shall prevail.

➔Section 5. KRS 337.285 is amended to read as follows:

- (1) No employer shall employ any of his employees for a work week longer than forty (40) hours, unless such employee receives compensation for his employment in excess of forty (40) hours in a work week at a rate of not less than one and one-half (1-1/2) times the hourly wage rate at which he is employed.
- (2) This provision shall not apply to the following:
  - (a) Employees of retail stores engaged in work connected with selling, purchasing, and distributing merchandise, wares, goods, articles, or commodities;
  - (b) Employees of restaurant, hotel, and motel operations;
  - (c) Employees as defined and exempted from the overtime provision of the Fair Labor Standards Act in Sections 213(b)(1), 213(b)(6), 213(b)(10), and 213(b)(17) of Title 29, U.S.C.;
  - (d) Employees whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private nonprofit childcaring facilities licensed by the Cabinet for Health and Family Services under KRS 199.640 to 199.670; or
  - (e) Any individual who is employed by a third-party employer or agency other than the family or household using his or her services to provide in-home companionship services for a sick, convalescing, or elderly person.
- (3) As used in subsection (2) of this section, "companionship services" means those services which provide in-home fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. These services may include household work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. They may also include the performance of general household work, provided that the household work is incidental, i.e., does not exceed twenty percent (20%) of the total weekly hours worked. The term "companionship services" does not include services relating to the care and protection of the aged or infirm which require and are performed by trained personnel, such as a registered or practical nurse.
- (4) Notwithstanding the provisions of subsection (1) of this section or any other chapter of the KRS to the contrary, upon written request by a county or city employee, made freely and without coercion, pressure, or suggestion by the employer, and upon a written agreement reached between the employer and the county or city employee before the performance of the work, a county or city employee who is authorized to work one (1) or more hours in excess of the prescribed hours per week may be granted compensatory leave on an hour-for-hour basis. Upon the written request by a county or city employee, made freely and without coercion, pressure, or suggestion by the employer, and upon a written agreement reached between the employer and the county or city employee before the performance of the work, a county or city employee who is not exempt from the provisions of the Federal Fair Labor Standards Act *of 1938, as amended*, 29 U.S.C. *sec. 201* et seq., may be granted compensatory time in lieu of overtime pay, at the rate of not less than one and one-half (1-1/2) hours for each hour the county or city employee is authorized to work in excess of forty (40) hours in a work week.
- (5)
  - (a) Upon the request of the county or city employee, and as provided in subsection (4) of this section, compensatory time shall be awarded as follows:
    1. A county or city employee who provided work in excess of forty (40) hours in a public safety activity, an emergency response activity, or a seasonal activity as described in 29 C.F.R. *sec. 553.24*, may accrue not more than four hundred eighty (480) hours of compensatory time; or
    2. A county or city employee engaged in other work in excess of forty (40) hours, may accrue not more than two hundred forty (240) hours of compensatory time.
  - (b) A county or city employee who has accrued four hundred eighty (480) hours of compensatory time off pursuant to paragraph (a)1. of this subsection, or two hundred forty (240) hours of compensatory time off pursuant to paragraph (a)2. of this subsection, shall for additional overtime hours of work, be paid overtime compensation.
- (6) A county or city employee who has accrued compensatory time off as provided in subsection (4) of this section, and who requested the use of compensatory time, shall be permitted by the employer to use the compensatory time within a reasonable period after making the request if the use of the compensatory time

does not unduly disrupt the operations of the employer. Mere inconvenience to the employer shall not constitute a sufficient basis for denial of a county or city employee's request for compensatory time off.

- (7) If compensation is paid to a county or city employee for accrued compensatory time off, the compensation shall be paid at the regular rate earned by the county or city employee at the time the county or city employee receives the payment.
- (8) Upon a county or city employee's termination of employment, all unused accrued compensatory time shall be paid at a rate of compensation not less than:
  - (a) The average regular rate received by the county or city employee during the last three (3) years of the county or city employee's employment; or
  - (b) The final regular rate received by the county or city employee, whichever is higher.
- (9) Compensatory time shall not be used as a means to avoid statutory overtime compensation. A county or city employee shall have the right to use compensatory time earned and shall not be coerced to accept more compensatory time than an employer can realistically and in good faith expect to be able to grant within a reasonable period upon the county or city employee making the request for compensatory time off.
- (10) Nothing in subsections (4) to (9) of this section shall be construed to supersede any collective bargaining agreement, memorandum of understanding, or any other agreement between the employer and representative of the county or city employees.
- (11) As used in subsections (4) to (9) of this section, "county or city employee" means an employee of any county, city, charter county, consolidated local government, unified local government, or urban-county government, including an employee of a county or city elected official.
- (12) *In addition to the designation of a work week under subsection (1) of this section, local governments, as defined in subsection (3) of Section 1 of this Act, may designate a work period for professional firefighter employees as defined in Section 1 of this Act. The designated work period shall be not less than one (1) work week of seven (7) consecutive days and not more than four (4) work weeks of twenty-eight (28) consecutive days for purposes of complying with the requirements of the Federal Labor Standards Act of 1938, as amended, 29 U.S.C. sec. 201 et seq. This subsection shall not exempt local governments from complying with the overtime requirements set forth in subsection (1) of this section and is intended to:*
  - (a) *Clarify the option to designate both a work week for compliance with Kentucky law and a work period for compliance with the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. sec. 201 et seq.; and*
  - (b) *Allow for the application of the partial exemption set forth in 29 U.S.C. sec. 207(k) in determining overtime pay under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. sec. 201 et seq., only.*

➔Section 6. Whereas it is necessary for local governments to establish budgets, including expenditures resulting from receipt of disbursements from the Firefighters Foundation Program Fund, and in the best interest of professional firefighters to continue to receive distributions from the fund, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon otherwise becoming law.

**Signed by the Governor March 20, 2009.**

## CHAPTER 34

### (SB 47)

AN ACT relating to the transportation of agricultural crop products and livestock.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

- ➔Section 1. KRS 189.222 is amended to read as follows:
- (1) Except as provided in subsection (2) of this section, the secretary of the Transportation Cabinet in respect to highways which are a part of the state-maintained system, by official order, may increase on designated highways or portions thereof, the maximum height, length, and gross weight prescribed in KRS 189.221, if in the opinion of the secretary, the increased height, length, and weight designated by him are justified by the

strength, safety, and durability of the designated highways, and the highways do not appear susceptible to unreasonable and unusual damage by reason of the increases and the secretary may establish reasonable classification of state maintained roads and fix a different maximum for each classification. Any increase in the height, length, or width of any motor truck or tractor semitrailer combinations or any other vehicle combinations including any part of the body or load or designation of highways to be used by the vehicles, shall not, in any way, exceed the federal law or regulations thereunder or jeopardize the allotment or qualification for federal aid funds of the Commonwealth of Kentucky or exceed the following dimensions and weights:

- (a) Height, thirteen and one-half (13-1/2) feet;
  - (b) Length, semitrailers, fifty-three (53) feet; trailers, twenty-eight (28) feet; motor trucks, forty-five (45) feet, not to exceed two (2) trailers per truck tractor;
  - (c) Weight, twenty thousand (20,000) pounds per single axle, with axles less than forty-two (42) inches apart to be considered as a single axle; thirty-four thousand (34,000) pounds on two (2) axles in tandem arrangement which are spaced forty-two (42) inches or more apart and less than ninety-six (96) inches apart; forty-eight thousand (48,000) pounds on three (3) axles which are spaced forty-two (42) inches or more apart and less than one hundred twenty (120) inches apart. No single axle in any arrangement shall exceed twenty thousand (20,000) pounds or seven hundred (700) pounds per inch of the aggregate width of all the tires on a single axle, whichever is less. The total gross weight of the vehicle and load shall not exceed eighty thousand (80,000) pounds;
  - (d) Except on the interstate highway system, a tolerance of not more than five percent (5%) per axle load shall be permitted before a carrier is deemed to have violated paragraph (c) of this subsection. The gross weight shall not exceed eighty thousand (80,000) pounds;
  - (e) Except as provided for in paragraph (f) of this subsection, truck tractor, semitrailer and trailer combinations, and other vehicle combinations may be operated only on the interstate system and on those parts of the federal aid highway system and the state-maintained system which have been designated by the secretary of the Transportation Cabinet by official order as safely allowing same;
  - (f) A vehicle or combination of vehicles that is one hundred two (102) inches wide or less and has a gross weight of not more than eighty thousand (80,000) pounds may be driven on any state highway, for a distance of up to fifteen (15) miles from an interstate or parkway exit.
- (2) In addition to the provisions of KRS 189.2226, vehicles with a gross weight of up to eighty thousand (80,000) pounds may travel on any state highway in the Commonwealth without obtaining a special permit, if the weight does not exceed any limits mandated by federal law or regulation, any posted bridge weight limit, or the weight limits for the size and type of vehicle established under paragraph (c) of subsection (1) of this section, and if the vehicle is transporting any of the following:
- (a) Meats or agricultural crop products originating from a farm to first market;
  - (b) Livestock or poultry from their point of origin to first market;
  - (c) Primary forest products, including, but not limited to, sawdust, wood chips, bark, slabs, or logs originating from their points of origin to first market; or
  - (d) Supplies, materials, or equipment necessary to carry out a farming operation engaged in the production of agricultural crop products, meats, livestock, or poultry.
- (3) ***Vehicles registered under the provisions of KRS 186.050(4)(b) that are engaged exclusively in the transportation of items listed in paragraphs (a), (b), and (c) of Subsection (2) of this section may exceed the gross weight provisions set forth in Subsection (1)(c) of this section by a weight tolerance of ten percent (10%), except on the interstate highway system.***
- (4) Vehicles exclusively engaged in the transportation of motor vehicles, unmanufactured tobacco, or unmanufactured tobacco products may, on those highways which are a part of the state-maintained system and which have been designated by the secretary of the Transportation Cabinet by official order as safely allowing same, attain the maximum lengths as provided by subsection (1)(b) of this section, excluding the usual and ordinary bumper overhang of the transported vehicles.

- ~~(5)(4)~~ Vehicles engaged exclusively in the transportation of farm or primary forestry products and registered under KRS 186.050(4) or 186.050(9) and vehicles engaged exclusively in the transportation of ready-mixed concrete shall be excluded from the axle weight provisions, except on interstate highways, and subject only to total gross weight provisions.
- ~~(6)(5)~~ Vehicles registered pursuant to KRS 186.050(3)(b) and engaged in the transportation of primary forest products, including, but not limited to, vehicles transporting sawdust, wood chips, bark, slabs, or logs, may exceed the axle, or gross weight provisions as set forth in accordance with subsection (1)(c) of this section by a weight tolerance of ten percent (10%), except on the interstate highway system.
- ~~(7)(6)~~ Vehicles designed for and engaged exclusively in the collection and hauling of refuse and registered under KRS 186.050(3)(b) shall be excluded from the axle weight provisions, except when in operation on the federal interstate system, and subject only to total gross weight provisions.
- ~~(8)(7)~~ The secretary of the Transportation Cabinet may by order increase the weight and height limits prescribed by this chapter for motor vehicles while being operated exclusively on roads or highways being constructed, reconstructed, or repaired under contract with the Transportation Cabinet by the contractor or subcontractor, agent, or employee thereof.
- ~~(9)(8)~~ ***Except as otherwise provided in*** ~~Notwithstanding any other provisions of~~ this chapter, the secretary of the Transportation Cabinet shall not authorize the operation of any vehicle or combination of vehicles, upon any part of the federal aid highway system or state parkway system, which exceeds the following dimensions and weights:
- (a) Width, one hundred two (102) inches, including any part of the body or load;
  - (b) Weight, twenty thousand (20,000) pounds per single axle, with axles less than forty-two (42) inches apart to be considered as a single axle; thirty-four thousand (34,000) pounds on two (2) axles in tandem arrangement which are spaced forty-two (42) inches or more apart and less than ninety-six (96) inches apart; forty-eight thousand (48,000) pounds on three (3) axles which are spaced forty-two (42) inches or more apart and less than one hundred twenty (120) inches apart. The total gross weight of the vehicle and load shall not exceed eighty thousand (80,000) pounds. If any federal law or laws or regulations thereunder are hereafter enacted authorizing weights and dimensions in excess of those set out in paragraphs (a) and (b) of this subsection, the secretary of the Transportation Cabinet may by official order increase the maximum weights and dimensions but the increased weights and dimensions shall not exceed those set out in this section.
- ~~(10)(9)~~ Except on the interstate highway system, vehicles engaged exclusively in the transportation of crushed stone, fill dirt and rock, soil, bulk sand, coal, phosphate muck, asphalt, concrete, solid waste, tankage or animal residues, livestock, and agricultural products shall be permitted a tolerance of ten percent (10%) of the axle weight provisions before a carrier is deemed to have violated paragraph (1)(c) of this section.
- ~~(11)(10)~~ The Transportation Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A, relating to the implementation of 23 C.F.R. Part 658 as it relates to state-maintained or locally-maintained roads. The enforcement of the provisions of KRS 189.221 and this section on locally-maintained roads shall not be the responsibility of the law enforcement officers of the Transportation Cabinet, unless the head of the corresponding local government unit has requested, in writing, enforcement assistance from the Transportation Cabinet.

➔Section 2. KRS 189.221 is amended to read as follows:

A person shall not operate on any highway, except those highways designated by the secretary of transportation under the provisions of KRS 189.222, or those locally maintained highways under the provisions of KRS 189.222~~(11)(10)~~ or KRS 189.230(4), any of the following trucks, trailers, manufactured homes, or vehicles:

- (1) Any motor truck, semitrailer, trailer, manufactured home, or vehicle which exceeds eleven and one-half (11-1/2) feet in height or ninety-six (96) inches in width, including any part of the body or load;
- (2) Any motor truck, except a semitrailer truck, which exceeds twenty-six and one half (26-1/2) feet in length, including any part of the body or load;
- (3) Any semitrailer truck which exceeds thirty (30) feet in length, including any part of the body or load;
- (4) Any truck, semitrailer truck, or truck and trailer unit which exceeds 36,000 pounds gross weight, including the load;

- (5) Any truck, semitrailer truck, or tractor-trailer unit which exceeds a gross weight equal to the sum of six hundred (600) pounds per inch of the combined width of the tires upon which the vehicle may be propelled, but no more than thirty-six thousand (36,000) pounds.
- (6) Notwithstanding the provisions of this section, any truck hauling building materials under KRS 189.2226, or to a road construction project on a highway rated less than the maximum weight provided above, may haul up to eighty thousand (80,000) pounds gross weight, including the load, without a permit.

**Signed by the Governor March 20, 2009.**

## CHAPTER 35

### (SB 70)

AN ACT relating to the Apprenticeship and Training Council.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 343.020 is amended to read as follows:

- (1) (a) The Governor shall appoint an Apprenticeship and Training Council composed of ***four (4)***~~three (3)~~ representatives from employer organizations, ***four (4) representatives***~~and three (3)~~ from employee organizations, ***and one (1) at-large member*** who shall serve for a term of ***four (4)***~~three (3)~~ years and until their successors are appointed and qualified. The executive director of ***the Office of Workplace Standards, the commissioner of the Department for Workforce Investment,***~~workplace standards~~ and the chancellor for the Technical Institutions' Branch in the Kentucky Community and Technical College System shall be ex officio members of the council. The chairman shall be elected by vote of the Apprenticeship and Training Council.
- (b) The regular members of the council shall each have one (1) vote. In the event of a tie vote among the regular members, the executive director of ***the Office of Workplace Standards*** shall have the right to cast the tie-breaking vote. Each member of the council shall receive his actual and necessary expenses incurred in attending its meetings.
- (c) The council shall meet at the call of the executive director and shall aid him in formulating policies for the effective administration of this chapter. The executive director with the aid of the council shall have the authority to make and revise such rules and regulations as he may deem appropriate to carry out the provisions and purposes of this chapter.
- (2) (a) ***On the effective date of this Act, the terms of the council members appointed on September 12, 2006, shall end, and the Governor shall make the following appointments to the Apprenticeship and Training Council:***
  - 1. ***Two (2) representatives from employer organizations, and two (2) representatives from employee organizations to serve for terms that shall expire on December 31, 2009;***
  - 2. ***Two (2) representatives from employer organizations, and two (2) representatives from employee organizations to serve for terms that shall expire on December 31, 2010; and***
  - 3. ***One (1) at-large member to serve for a term that shall expire on December 31, 2011.***
- (b) ***Subsequent members shall serve terms of four (4) years and shall serve until their successors are appointed and qualified.***
- (3) The council shall be attached to the Department of Labor for administrative purposes.

**Signed by the Governor March 20, 2009.**

## CHAPTER 36

## (SB 83)

AN ACT relating to county agricultural development councils.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 248.721 is amended to read as follows:

- (1) Each county shall establish an agricultural development council to evaluate the needs of the local agricultural economy and to devise a plan for the county that would identify programs best suited for the agricultural development of the county. The council shall assist prospective applicants in the council's county in obtaining moneys from the agricultural development fund. ~~Consideration shall be given to racial and gender equity in the appointment of council members.~~ Each council shall consist of ***nine (9)*** ~~eight (8)~~ members as follows:
  - (a) Two (2) farmers selected by the Farm Service Agency county committee;
  - (b) Two (2) members selected by the board or boards of the soil conservation district or districts serving the county;
  - (c) Two (2) members selected by the county extension council, one (1) of whom shall have experience in agricultural diversification; and
  - (d) ***Three (3) at-large members with farm experience and familiarity with the county's agricultural development opportunities and processes selected by the six (6) members in paragraphs (a) to (c) of this subsection.***
- (2) (a) ***No less than two (2) of the nine (9) members appointed to the county agricultural development council under subsection (1) of this section shall be*** ~~Two (2)~~ young farmers between the ages of twenty-one (21) and forty (40).
  - (b) ***At least one (1) of the nine (9) members appointed to the county agricultural development council under subsection (1) of this section shall represent a gender or race that is not represented on the council at the time of the selection*** ~~, selected by the six (6) members in paragraphs (a) to (c) of this subsection.~~
- (3) ~~(2)~~ (a) ~~Members of the councils shall be initially appointed by August 1, 2000. These members shall serve until June 30, 2002.~~ On July 1, 2002, and every two (2) years thereafter, members shall be appointed for two (2) year terms. ***Beginning on July 1, 2010, persons appointed to serve on county agricultural development councils shall be limited to two (2) consecutive two (2) year terms, but shall be eligible for appointment to additional consecutive terms after being absent from a council for a period of two (2) years between each cycle of consecutive terms.***
  - (b) ***Any vacancy occurring on a county agricultural development council before the expiration of the vacating member's term shall be filled within sixty (60) days by the authority or members making the original appointment, in the same manner as the original appointment was made under subsection (1) of this section.***
- (4) ~~(3)~~ Each council shall be attached to the county cooperative extension service for administrative support.
- (5) ~~(4)~~ Each council shall receive guidance and assistance from the board as the council devises plans and assists applicants as provided in subsection (1) of this section.
- (6) ~~(5)~~ Councils shall make applicants aware of criteria for projects set out in KRS 248.711.
- (7) ~~(6)~~ Councils shall be responsible for developing local strategies for enhancing agricultural opportunities and assisting local farmers.
- (8) ~~(7)~~ Each council shall utilize the resources of the Agricultural Entrepreneurship Program created in KRS 248.717, the Kentucky Small Business Development Center Network, and the Kentucky Department of Agriculture for assistance and support in aiding prospective applicants in obtaining moneys from the fund.
- (9) ~~(8)~~ Each county council shall provide its plan to the board. If the state board recommends changes in the county plan that the council does not agree with, the council may take the plan before the subcommittee created in KRS 248.723 for discussion and possible resolution of differences.

➔Section 2. By July 1, 2010, each county agricultural development council appointing authority set out in subsection (1)(a) to (c) of Section 1 of this Act shall replace its longest-serving member on the council with a new appointee, provided the longest-serving member has served on the council for four or more years. By July 1, 2012, each appointing authority set out in subsection (1)(a) to (c) of Section 1 of this Act shall replace its longest-serving member on the county council with a new appointee, provided the longest-serving member has served on the council for four or more years. If two council appointees have served the same amount of time, the appointing authority shall determine which council appointee shall leave the council. Council members who are not reappointed in 2010 or 2012 shall be eligible for reappointment two years after their departure from the council.

➔Section 3. KRS 248.723 is amended to read as follows:

- (1) There is created a permanent subcommittee of the Legislative Research Commission to be known as the Tobacco Settlement Agreement Fund Oversight Committee. The subcommittee shall be composed of twelve (12) members and shall include four (4) members of the House of Representatives appointed by the Speaker; two (2) members of the minority party in the House of Representatives appointed by the Minority Floor Leader; four (4) members of the Senate appointed by the President; and two (2) members of the minority party in the Senate appointed by the Minority Floor Leader. The members of the subcommittee shall serve for terms of two (2) years. The appointed members from each chamber shall elect one (1) member from their chamber to serve as co-chair. Any vacancy that may occur in the membership of the subcommittee shall be filled pursuant to this subsection by the same appointing authority who made the original appointment.
- (2) The co-chairs shall have joint responsibilities for committee meeting agendas and presiding at committee meetings. The members of the subcommittee shall be compensated for attending meetings as provided in KRS 7.090(3) and 7.110(5).
- (3) A majority of the entire membership of the Tobacco Settlement Agreement Fund Oversight Committee shall constitute a quorum, and all actions of the subcommittee shall be by vote of a majority of its entire membership.
- (4) Any professional, clerical, or other employees required by the subcommittee shall be provided in accordance with KRS 7.090(4) and (5).
- (5)
  - (a) Subsections (6) to (10) of this section shall apply only to the expenditures from and projects under the agricultural development fund;
  - (b) Subsection (11) shall apply to all expenditures under the tobacco settlement agreement fund created in KRS 248.654; and
  - (c) Subsection (12) shall apply to expenditures from the early childhood development fund and the Kentucky health care improvement fund created in KRS 200.151 and 194A.055.
- (6) The subcommittee shall review each project being submitted to the Agricultural Development Board. In reviewing the projects, the subcommittee shall determine whether the criteria or requirements required by KRS 248.701 to 248.727 have been met and whether any other relevant requirements have been met.
- (7)
  - (a) If the subcommittee determines that any of the criteria or requirements required by KRS 248.701 to 248.727, except as provided in subsection (5) of this section, have not been met, the subcommittee may, by majority vote, recommend to the board in writing that a project not be approved.
  - (b) If the subcommittee determines that all relevant criteria were met for proposals not approved by the board, the subcommittee may, by majority vote, recommend to the board in writing that the project be approved.
  - (c) The reasons for recommending that a project be approved or not approved shall be stated in correspondence from the subcommittee, which shall be issued within thirty (30) days of action of the subcommittee.
- (8) If the board proceeds with approval of a project under the agricultural development fund that the subcommittee has recommended in writing not be approved, or refuses to approve a project that the subcommittee has recommended in writing be approved, the board shall provide a written explanation to the subcommittee as to why the board took that action on the project. The written explanation shall be sent within thirty (30) days of receiving the subcommittee's notification.

- (9) The subcommittee shall also hear cases that arise under KRS 248.721(9)~~((8))~~ and 248.711(4). In these cases the subcommittee shall provide a forum for discussion and possible resolution of differences between the board and the affected party. If the differences are not resolved, the subcommittee may, by majority vote, recommend to the board in writing a course of action.
- (10) The subcommittee shall maintain records of its findings and determinations. The records shall be transmitted to the appropriate interim joint committees of the Legislative Research Commission within thirty (30) days of making any determination.
- (11) The subcommittee shall issue an annual written report to the Legislative Research Commission regarding the findings of the subcommittee.
- (12) All expenditures under the early childhood development fund and the Kentucky health care improvement fund created in KRS 200.151 and 194A.055 shall be reported to the subcommittee. The expenditures shall be submitted in an electronic format in a manner approved by the Legislative Research Commission in order for the Commission to have a repository of information in Master Settlement Agreement funding expenditures.

**Signed by the Governor March 20, 2009.**

## CHAPTER 37

### (SB 84)

AN ACT relating to agricultural products.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 45A.645 is amended to read as follows:

- (1) (a) If purchasing agricultural products, state agencies, as defined by KRS 45A.505, shall purchase Kentucky-grown agricultural products if the products are available and if the vendor can meet the applicable quality standards and pricing requirements of the state agency.
- (b) ***All state agencies that purchase agricultural products shall, on or before January 1 of each year, provide a report to the Legislative Research Commission and to the Department of Agriculture describing the types, quantities, and costs of each product purchased. The report shall be completed on a form provided by the department.***
- (2) (a) Prospective vendors of Kentucky-grown agricultural products may apply to the Kentucky Department of Agriculture for marketing assistance for the authorized use of logos or labeling statements to be used on Kentucky-grown agricultural products under KRS 260.017, the Kentucky Proud™ Program.
- (b) Before a state agency may purchase Kentucky-grown agricultural products, the vendor shall be required to participate in the Kentucky Proud™ Program established by KRS 260.017, and shall provide to the purchasing officer written certification that the agricultural products under consideration for purchase meet the definition of Kentucky-grown agricultural product.
- (c) All state agencies that purchase Kentucky-grown agricultural products shall, on or before January 1 of each year, provide a report to the Legislative Research Commission and to the Department of Agriculture describing the ***types, quantities, and costs***~~amount~~ of each product purchased. ***The report shall be completed on a form provided by the department.***
- (3) If a contract is awarded to a vendor that supplies agricultural products that are raised or produced outside the United States or its territories, the vendor shall be required to identify the country in which the agricultural product was raised or produced if the vendor is the producer or packager of the product or if the vendor is not the producer or packager, provided the information is available to the vendor from the producer or packager of the product. The producer or packager shall clearly label that information on any containers or packages holding the product.

➔Section 2. KRS 164A.575 is amended to read as follows:

- (1) The governing boards of each institution may elect to purchase interest in real property, contractual services, rentals of all types, supplies, materials, equipment, printing, and services, except that competitive bids may not be required for:

- (a) Contractual services where no competition exists;
  - (b) Food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies;
  - (c) Instructional materials available from only one (1) source;
  - (d) Where rates are fixed by law or ordinance;
  - (e) Library books;
  - (f) Commercial items that are purchased for resale;
  - (g) Professional, technical, scientific, or artistic services, but contracts shall be submitted in accordance with KRS 45A.690 to 45A.725;
  - (h) All other commodities, equipment, and services which, in the reasonable discretion of the board, are available from only one (1) source; and
  - (i) Interests in real property.
- (2) Nothing in this section shall deprive the boards from negotiating with vendors who maintain a General Services Administration price agreement with the United States of America or any agency thereof, provided, however, that no contract executed under this provision shall authorize a price higher than is contained in the contract between General Services Administration and the vendor affected.
- (3) The governing board shall require the institution to take and maintain inventories of plant and equipment.
- (4) The governing board shall establish procedures to identify items of common general usage among all departments to foster volume purchasing. It shall establish and enforce schedules for purchasing supplies, materials, and equipment.
- (5) The governing board shall have power to salvage, to exchange, and to condemn supplies, equipment, and real property.
- (6) Upon the approval of the secretary of the Finance and Administration Cabinet, the governing board may purchase or otherwise acquire all real property determined to be needed for the institution's use. The amount paid shall not exceed the appraised value as determined by a qualified appraiser or the value set by the eminent domain procedure. Any real property acquired under this section shall be in name of the Commonwealth for the use and benefit of the institution.
- (7) The governing board shall sell or otherwise dispose of all real or personal property of the institution which is not needed or has become unsuitable for public use, or would be more suitable consistent with the public interest for some other use, as determined by the board. The determination of the board shall be set forth in an order, and shall be reached only after review of a written request by the institution desiring to dispose of the property. Such request shall describe the property and state the reasons why the institution believes disposal should be effected. All instruments required by law to be recorded which convey any interest in any such real property so disposed of shall be executed and signed by the appropriate officer of the board. Unless the board deems it in the best interest of the institution to proceed otherwise, all such real or personal property shall be sold either by invitation of sealed bids or by public auction; provided, however, that the selling price of any interest in real property shall not be less than the appraised value thereof as determined by the Finance and Administration Cabinet or the Transportation Cabinet for such requirements of that department.
- (8) Real property or any interest therein may, subject to the provisions of KRS Chapter 45A, be purchased, leased, or otherwise acquired from any officer or employee of any board of the institution, based upon a written application by the grantor or lessor approved by the board, that the employee has not either himself or through any other person influenced or attempted to influence either the board requesting the purchase of the property. In any case in which such an acquisition is consummated, the said request and finding shall be recorded and kept by the Secretary of State along with the other documents recorded pursuant to the provisions of KRS Chapter 56.
- (9) (a) As used in this section, "construction manager-agency," "construction management-at-risk," "design-bid-build," and "design-build" shall have the same meaning as in KRS 45A.030.

- (b) For capital construction projects, the procurement may be on a total design-bid-build basis, a design-build basis, or construction management-at-risk basis, whichever in the judgment of the board offers the best value to the taxpayer. Proposals shall be reviewed by the institution's engineering staff to assure quality and value, and compliance with procurement procedures. All specifications shall be written to promote competition. Services for projects delivered on the design-build basis or construction management-at-risk basis shall be procured in accordance with KRS 45A.180 and the regulations promulgated in accordance with KRS 45A.180. Nothing in this section shall prohibit the procurement of construction manager-agency services.
- (10) The governing board shall attempt in every practicable way to insure the institution's supplying its real needs at the lowest possible cost. To accomplish this the board may enter into cooperative agreements with other public or private institutions of education or health care.
- (11) The governing board shall have control and supervision over all purchases of energy consuming equipment, supplies, and related equipment purchased or acquired by the institution, and shall designate by regulation the manner in which an energy consuming item will be purchased so as to promote energy conservation and acquisition of energy efficient products.
- (12) The governing board may negotiate directly for the purchase of contractual services, supplies, materials, or equipment in bona fide emergencies regardless of estimated costs. The existence of the emergency must be fully explained, in writing, by the vice president responsible for business affairs and such explanation must be approved by the university president. The letter and approval shall be filed with the record of all such purchases. Where practical, standard specifications shall be followed in making emergency purchases. A good faith effort shall be made to effect a competitively established price for emergency purchases.
- (13) (a) *All governing boards that purchase agricultural products, as defined by KRS 45A.630, shall, on or before January 1 of each year, provide a report to the Legislative Research Commission and to the Department of Agriculture describing the types, quantities, and costs of each product purchased. The report shall be completed on a form provided by the department.*
- (b) If purchasing agricultural products, ~~as defined by KRS 45A.630,~~ a governing board shall encourage the purchase of Kentucky-grown agricultural products in accordance with KRS 45A.645. If a governing board purchases agricultural products through a contract with a vendor or food service provider, the contract shall require that if Kentucky-grown agricultural products are purchased, the products shall be purchased in accordance with KRS 45A.645. Only contracts entered into or renewed after July 15, 2008, shall be required to comply with the provisions of this subsection.
- (c) *All governing boards that purchase Kentucky-grown agricultural products shall, on or before January 1 of each year, provide a report to the Legislative Research Commission and to the Department of Agriculture describing the types, quantities, and costs of each product purchased. The report shall be completed on a form provided by the department.*

**Signed by the Governor March 20, 2009.**

## CHAPTER 38

### (SB 148)

AN ACT relating to sexual and violent offenders.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 160.380 is amended to read as follows:

- (1) As used in this section:
- (a) "Contractor" means an adult who is permitted access to school grounds pursuant to a current or prospective contractual agreement with the school, school board, school district, or school-affiliated entity, at times when students are present. The term "contractor" includes an employee of a contractor;
- (b) "Relative" means father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law; and

- (c) "Vacancy" means any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.
- (2) (a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the Kentucky Board of Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any time after February 1 preceding the beginning of the school year. No superintendent of schools shall appoint or transfer himself or herself to another position within the school district.
- (b) When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer thirty (30) days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.
- (c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days.
- (d) When a vacancy occurs in a local district, the superintendent shall conduct a search to locate minority teachers to be considered for the position. The superintendent shall, pursuant to administrative regulations of the Kentucky Board of Education, report annually the district's recruitment process and the activities used to increase the percentage of minority teachers in the district.
- (e) No relative of a superintendent of schools shall be an employee of the school district. However, this shall not apply to a relative who is a classified or certified employee of the school district for at least thirty-six (36) months prior to the superintendent assuming office, or prior to marrying a relative of the superintendent, and who is qualified for the position the employee holds. A superintendent's spouse who has at least twenty (20) years of service in school systems may be an employee of the school district. A superintendent's spouse who is employed under this provision shall not hold a position in which the spouse supervises certified or classified employees. A superintendent's spouse may supervise teacher aides and student teachers. However, the superintendent shall not promote a relative who continues employment under an exception of this subsection.
- (f) No superintendent shall employ a relative of a school board member of the district, unless on July 13, 1990, the board member's relative is an employee of the district, the board member is holding office, and the relative was not initially hired by the district during the tenure of the board member. A relative employed in 1989-90 and initially hired during the tenure of a board member serving on July 13, 1990, may continue to be employed during the remainder of the board member's term. However, the superintendent shall not promote any relative of a school board member who continues employment under the exception of this subsection.
- (g) 1. No principal's relative shall be employed in the principal's school, except a relative who is not the principal's spouse and who was employed in the principal's school during the 1989-90 school year.
2. No spouse of a principal shall be employed in the principal's school, except:
- a. A principal's spouse who was employed in the principal's school during the 1989-90 school year for whom there is no position for which the spouse is certified to fill in another school operated in the district; or

- b. A principal's spouse who was employed in the 1989-90 school year and is in a school district containing no more than one (1) elementary school, one (1) middle school, and one (1) high school.
      3. A principal's spouse who is employed in the principal's school shall be evaluated by a school administrator other than the principal.
      4. The provisions of KRS 161.760 shall not apply to any transfer made in order to comply with the provisions of this paragraph.
- (3) No superintendent shall employ in any position in the district any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony. The superintendent may employ, at his discretion, persons convicted of sex crimes classified as a misdemeanor.
- (4)
  - (a) A superintendent shall require a national and state criminal background check on all new certified hires in the school district and student teachers assigned within the district. Excluded are certified individuals who were employed in another certified position in a Kentucky school district within six (6) months of the date of hire and who had previously submitted to a national and state criminal background check for the previous employment.
  - (b) The superintendent shall require that each new certified hire and student teacher, as set forth in paragraph (a) of this subsection, submit to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation.
  - (c) All fingerprints requested under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation from the Department of Kentucky State Police after a state criminal background check is conducted. The results of the state and federal criminal background check shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police and the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the search.
  - (d) The Education Professional Standards Board may promulgate administrative regulations to impose additional qualifications to meet the requirements of Public Law 92-544.
- (5) A superintendent shall require a state criminal background check on all classified initial hires.
  - (a) The superintendent shall require that each classified initial hire submit to a state criminal history background check by the Department of Kentucky State Police. If an applicant has been a resident of Kentucky twelve (12) months or less, the superintendent may require a national criminal history background check as a condition of employment.
  - (b) Any request for records under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The results of the state criminal background check and the results of the national criminal history background check, if requested under the provisions of paragraph (a) of this subsection, shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (6) The superintendent may require a contractor, volunteer, or visitor to submit to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation. Any request for records under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The results of the state criminal background check and the results of the national criminal history background check, if requested, shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (7)
  - (a) If a school term has begun and a certified or classified position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the criminal history background check. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.

- (b) Employment shall be contingent on the receipt of the criminal history background check documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165.
  - (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the school district of a criminal history background check documenting a record of a sex crime or as a violent offender as defined in KRS 17.165 and no further procedures shall be required.
  - (d) The provisions of KRS 161.790 shall apply to terminate employment of a certified employee on the basis of a criminal record other than a record of a sex crime or as a violent offender as defined in KRS 17.165.
- (8) (a) Each application or renewal form, provided by the employer to an applicant for a classified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT. UNDER CERTAIN CIRCUMSTANCES, A NATIONAL CRIMINAL HISTORY BACKGROUND CHECK MAY BE REQUIRED AS A CONDITION OF EMPLOYMENT."
- (b) Each application or renewal form, provided by the employer to an applicant for a certified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND STATE CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT."
- (c) Each application form for a district position shall require the applicant to:
1. Identify the states in which he or she has maintained residency, including the dates of residency; and
  2. Provide picture identification.
- (9) The provisions of subsections (4), (5), (6), (7), and (8) of this section shall apply to a nonfaculty coach or nonfaculty assistant as defined under KRS 161.185.
- (10) *A school-based decision making council parent member, as defined under KRS 160.345, shall submit to a state and national fingerprint-supported criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation. The results of the state criminal history background check and the results of the national criminal history background check, if requested, shall be sent to the district superintendent. Any fee charged by the Department of Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search. A parent member may serve prior to the receipt of the criminal history background check report but shall be removed from the council on receipt by the school district of a report documenting a record of a sex crime or criminal offense against a victim who is a minor as defined in KRS 17.500 or as a violent offender as defined in KRS 17.165 and no further procedures shall be required.*
- (11) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, when an employee of the school district is charged with any offense which is classified as a felony, the superintendent may transfer the employee to a second position until such time as the employee is found not guilty, the charges are dismissed, the employee is terminated, or the superintendent determines that further personnel action is not required. The employee shall continue to be paid at the same rate of pay he or she received prior to the transfer. If an employee is charged with an offense outside of the Commonwealth, this provision may also be applied if the charge would have been treated as a felony if committed within the Commonwealth. Transfers shall be made to prevent disruption of the educational process and district operations and in the interest of students and staff and shall not be construed as evidence of misconduct.

➔Section 2. KRS 17.545 is amended to read as follows:

- (1) No registrant, as defined in KRS 17.500, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility. The measurement shall be taken in a straight line from the nearest property line of the school to the nearest property line of the registrant's place of residence.

- (2) *No registrant, as defined in KRS 17.500, nor any person residing outside of Kentucky who would be required to register under KRS 17.510 if the person resided in Kentucky, shall be on the clearly defined grounds of a high school, middle school, elementary school, preschool, or licensed day care facility, except with the advance written permission of the school principal, the school board, or the day care director that has been given after full disclosure of the person's status as a registrant or sex offender from another state and all registrant information as required in KRS 17.500.*
- (3) For purposes of this section:
- (a) The registrant shall have the duty to ascertain whether any property listed in subsection (1) of this section is within one thousand (1,000) feet of the registrant's residence; and
  - (b) If a new facility opens, the registrant shall be presumed to know and, within ninety (90) days, shall comply with this section.
- ~~(4)~~~~(3)~~ Any person who violates subsection (1) of this section shall be guilty of:
- (a) A Class A misdemeanor for a first offense; and
  - (b) A Class D felony for the second and each subsequent offense.
- ~~(5)~~~~(4)~~ Any registrant residing within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility on July 12, 2006, shall move and comply with this section within ninety (90) days of July 12, 2006, and thereafter, shall be subject to the penalties set forth under subsection (3) of this section.
- ~~(6)~~~~(5)~~ This section shall not apply to a youthful offender probated or paroled during his or her minority or while enrolled in an elementary or secondary education program.
- ➔Section 3. KRS 17.990 is amended to read as follows:
- (1) Any person who violates any of the provisions of KRS 17.320 to 17.340 shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500).
  - (2) Any public official or employee who knowingly or intentionally makes, or causes to be made, a false return of information to the department shall be punished by confinement in jail for not more than ninety (90) days, by a fine not exceeding five hundred dollars (\$500), or both.
  - (3)
    - (a) Any child-care center which violates KRS 17.165(4) or child-care provider that violates KRS 17.165(5) may be liable for license or certification revocation and the imposition of a civil penalty of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000) to be imposed and collected by the Cabinet for Health and Family Services; and
    - (b) In addition to penalties listed in this subsection, any child-care center which violates KRS 17.165(4) or child-care provider that violates KRS 17.165(5) shall be fined not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000).
  - (4) *Any person who violates the provisions of subsection (2) of Section 2 of this Act shall be guilty of a Class A misdemeanor.*

**Signed by the Governor March 20, 2009.**

## CHAPTER 39

### (SB 151)

AN ACT relating to the release of veterinarian records.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 321.185 is amended to read as follows:

- (1) In order for a veterinarian to practice veterinary medicine, a relationship among the veterinarian, the client, and the patient shall be established and maintained. "Veterinarian-client-patient relationship" means that:

- (a) The veterinarian has assumed the responsibility for making judgments regarding the health of the animal and the need for veterinary treatment, and the client, whether owner or other caretaker, has agreed to follow the instructions of the veterinarian;
  - (b) There is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal ~~or~~ by medically appropriate and timely visits to the premises where the animal is kept; and
  - (c) The practicing veterinarian is readily available or shall provide medical service for follow-up in case of adverse reactions or failure of the regimen of therapy. A new regimen of therapy shall be contingent only upon cooperation of the client and availability of the subject animal.
- (2) The veterinarian shall maintain records which document patient visits, diagnosis, treatment, and other relevant information.
- (3) (a) *A veterinarian shall not violate the confidential relationship between the veterinarian and the veterinarian's client.*
- (b) *A veterinarian shall not release information concerning a client or care of a client's animal, except on the veterinarian's receipt of:*
- 1. *A written authorization or other form of waiver executed by the client; or*
  - 2. *An appropriate court order or subpoena.*
- (c) *A veterinarian who releases information as required under paragraph (b) of this subsection shall not be liable to any person, including the client, for an action resulting from the disclosure.*
- (d) *The privilege provided by this subsection is waived by the client or the owner of an animal treated by the veterinarian to the extent the client or owner places at issue in a civil or criminal proceeding:*
- 1. *The nature and extent of the animal's injuries; or*
  - 2. *The care and treatment of the animal provided by the veterinarian.*
- (e) *This subsection shall not apply to:*
- 1. *An inspection or investigation conducted by the board or an agent of the board; or*
  - 2. *The veterinary reporting requirements and regulatory authority of the Kentucky Horse Racing Commission to inspect, investigate, and supervise horses and other participants in horse racing as provided by KRS Chapter 230 and the administrative regulations promulgated under KRS Chapter 230, or any other law applicable to the regulation of horse racing in the Commonwealth.*
- (4) *Veterinarians providing copies of records under this section may charge no more than the actual cost of copying, including reasonable staff time.*

Signed by the Governor March 20, 2009.

## CHAPTER 40

### (HCR 106)

A CONCURRENT RESOLUTION urging the United States Food and Drug Administration (FDA) to delay the implementation of its final rule amending 21 C.F.R. 589 for a minimum of six months in order to reexamine the issue of carcass disposal and give states time to create disposal systems that meet the needs of producers, processors, renderers, and the general public.

WHEREAS, animals used in the production of milk, meat, and fiber, as well as animals used in the equine industry, are essential components of agriculture in the United States; and

WHEREAS, no matter how well animals are managed, some will die from a variety of causes, resulting in carcasses that will need to be disposed of. In addition, the normal processing of meat animals creates waste products that need to be disposed; and

WHEREAS, in April 2008, the FDA issued a final rule that would prohibit any material from carcasses of cattle that are 30 months of age or older from being used in animal food or feed unless the brain and spinal cord tissues have been removed. This prohibition, which is scheduled to go into effect April 2009, is intended to both reduce the risk of transmitting Bovine Spongiform Encephalopathy (Mad Cow Disease) and to reopen markets for beef exports to certain foreign countries; and

WHEREAS, while this body supports the concepts of food safety and increasing United States exports, it is concerned about the financial effects this rule will have on deadstock haulers, renderers, and livestock producers and the environmental effects this rule will have on the rural areas of our state; and

WHEREAS, a lack of viable, affordable, and environmentally sound processes for disposing of 670 million pounds of animal remains will result in a severe economic challenge for animal operations, and could present potential environmental hazards such as groundwater and surface water contamination, odor problems, and spread of disease from improper disposal; and

WHEREAS, improper disposal of animal remains will necessitate an increase in enforcement efforts by state agencies, resulting in additional costs to agency budgets that are already strained;

NOW, THEREFORE,

***Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:***

➔Section 1. The United States Food and Drug Administration is urged to delay the implementation of its final rule amending 21 C.F.R. 589 for a minimum of six months in order to reexamine the issue of carcass disposal and to give states time to create disposal systems that meet the needs of producers, processors, renderers, and the general public.

➔Section 2. The Clerk of the House of Representatives is directed to transmit a copy of this Resolution to the Commissioner of the United States Food and Drug Administration and to the members of the Kentucky Congressional Delegation.

**Signed by the Governor March 20, 2009.**

## CHAPTER 41

### (HB 150)

AN ACT relating to firefighters.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 95A.040 is amended to read as follows:

- (1) The commission shall make full and complete studies, recommendations and reports to the Governor, the Kentucky Community and Technical College System, and the Legislature for the purpose of establishing:
  - (a) Minimum standards and education of fire protection personnel appointed to positions in municipal fire departments, who are to be engaged in fire protection to include fire suppression, fire prevention, arson investigation, and other allied fields;
  - (b) Basic minimum courses of training for fire protection personnel;
  - (c) Procedure for the certification of fire protection personnel and the certification of fire protection instructors; and
  - (d) Administrative regulations to require that each volunteer firefighter be able to read, write and understand the English language, is a person of sobriety and integrity, is and has been an orderly, law-abiding citizen, is a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, and has reached the age of eighteen (18).

- (2) (a) *The commission shall establish by administrative regulation a candidate physical agility test to be administered to all candidates for professional firefighter positions. For the provisions of this section "professional firefighter" shall include any paid firefighter who is a member of a:*
1. *Municipal fire department organized under KRS Chapter 95;*
  2. *Fire protection district organized under KRS Chapter 75;*
  3. *County fire department created pursuant to KRS Chapter 67;*
  4. *Fire department under the jurisdiction of a consolidated local government;*
  5. *Fire department under the jurisdiction of a charter county government;*
  6. *Fire department under the jurisdiction of an urban county government;*
  7. *Fire department under the jurisdiction of a unified local government; and*
  8. *Fire department created under the provisions of KRS Chapter 273.*
- (b) *The candidate physical agility test shall establish uniform standards of the physical abilities required for all firefighter candidates. The candidate physical agility test shall be required for all firefighter candidates hired on or after January 1, 2013.*
- (c) *After the effective date of this Act the commission shall establish procedures for individual firefighter candidates to voluntarily take the candidate physical agility test. The commission shall also establish procedures for fire departments listed under subsection (2)(a) of this section to voluntarily require firefighter candidates hired by them to have successfully completed the candidate physical agility test. The procedures in this subsection shall be established by administrative regulation.*
- (d) *The candidate physical agility test shall be designed to assess a candidate's ability to handle the physical demands of fighting fires and shall include exercises that simulate the most common tasks involved in fire suppression. These exercises shall include but are not limited to: stair climb; hose drag; equipment carry; ladder raise and extension; forcible entry; search; rescue; ceiling breach, and pull.*
- (e) *The commission may establish a fee to be charged to candidates participating in the candidate physical agility test. The fee shall be no greater than an amount specified by the commission to cover the costs of implementing and administering the candidate physical agility test.*
- (f) *The commission shall promulgate administrative regulations, pursuant to the provisions of KRS Chapter 13A, to establish and implement the candidate physical agility test and to carry out any other responsibility assigned by this section. The administrative regulations shall be promulgated no later than October 1, 2009.*
- (3) The commission shall have the authority to:
- (a) Certify fire protection training and education programs as having attained the minimum required standards suggested by such commission;
  - (b) Certify instructors as having qualified as fire protection instructors under such conditions as the commission may prescribe;
  - (c) Direct research in the field of fire protection and accept gifts and grants for such purposes; and
  - (d) Recommend curricula for advanced courses and seminars in fire science training in colleges and institutions of higher education.
- ~~(4)~~(3) The commission shall have authority to receive and, to the extent required by federal law, to disburse all grants and funds from the federal government for the purpose of fire protection personnel training and education. Except as otherwise provided by law, the commission shall administer all state programs and all state and federally funded grant programs related to fire protection personnel training and education.

**Signed by the Governor March 20, 2009.**

## CHAPTER 42

## (HB 198)

AN ACT relating to community education.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 160.155 is amended to read as follows:

As used in KRS 160.157, unless the context otherwise requires:

- (1) "Board" means the board of education of a local school district;
- (2) "Community school" means a school that makes its facilities available for citizen use, coordinates activities of local citizens in identifying program needs and establishing priorities, identifies and utilizes available program resources, and assists in the initiation of programs to improve the cultural, social, recreational, and educational opportunities available in a community;
- (3) "Community education program" means a program in which a public building, including a public elementary or secondary school, is used as a community center operated by a local education agency in cooperation with other groups in the community, community organizations, and local governmental agencies to provide educational, recreational, cultural, health care, and other related community services in accordance with the needs, interests, and concerns of the community; **and**
- (4) "Community education director" means an employee of a local school district who is responsible for a **countywide**~~[systemwide]~~ program of community education in a school district **or school districts**~~;~~;
- ~~(5) "Community education coordinator" means an employee of a local school district who is responsible for the coordination of a specific program or other component of a total community education program within a local school district or community.~~

Section 2. KRS 160.156 is amended to read as follows:

- (1) The Kentucky Board of Education shall develop a state plan for community education which sets forth the goals and objectives of the program and establishes a system of priorities for targeting available resources on the areas with the greatest need.
- (2) The Kentucky **Department**~~[Board]~~ of Education shall administer a grant program pursuant to KRS 160.155 and 160.157 to provide money to local school districts to **employ one (1) full-time community education director**~~;~~:
  - ~~(a) Support staff~~ to plan and manage programs and services for community education~~;~~;
  - ~~(b) Support programs~~ that are targeted to the greatest educational needs in the community~~;~~ and ~~to~~
  - ~~(c)~~ encourage cooperation among all local school districts in a county. **Funds shall also be used to provide professional development training to all state-funded community education directors.**
- (3) Funds appropriated for this purpose shall be distributed by the Kentucky **Department**~~[Board]~~ of Education through a grant process. Districts shall provide a twenty-five percent (25%) cash match in order to receive state community education funding.

Section 3. KRS 160.157 is amended to read as follows:

- (1) A public school district may receive funding for a community school program if it meets all of the following criteria:
  - (a) Submits an application for approval by the Kentucky Board of Education in the manner and form prescribed by the Department of Education;
  - (b) Submits a plan, approved by the local board, which outlines the proposed community education program, including procedures for obtaining the involvement and cooperation of other agencies and groups in identifying and recommending programs for meeting locally determined needs;
  - (c) Establishes a council with the power to make district-wide decisions of policy to assist in conducting community needs assessments and recommending program priorities;

- (d) Employs ~~at least~~ one (1) full-time community education director.
- (2) Two (2) or more school districts may combine for purposes of qualifying for state funds if the local districts identify a district of record for purposes of receiving state community education funds, maintaining records, and filing reports. Two (2) or more districts in the same county that wish to apply for state funds shall submit a joint proposal.
- (3) Each grantee receiving state funds for a community education program shall submit an annual report to the ~~Kentucky State~~ Department of Education. The report shall include an evaluation of the program and a financial statement. Failure to submit the report shall result in the loss of state funding.

**Signed by the Governor March 20, 2009.**

## CHAPTER 43

### (HB 337)

AN ACT relating to the Kentucky Capitol centennial celebration.

WHEREAS, in 1905, Governor John Crepps Wickliffe Beckham called for an extraordinary session of Kentucky's General Assembly to address the need for a new Capitol, due to overcrowding and disrepair in the Old Capitol building, built in 1827; and

WHEREAS, Kentucky's New State Capitol, designed by Frank Mills Andrews in the Beaux Arts style, was constructed and furnished at a cost of \$1,820,000; and

WHEREAS, during the term of Kentucky Governor Augustus Everett Willson, the building was completed and, beginning with the boom of cannons on Arsenal Hill at noon on June 2, 1910, nearly 10,000 of Kentucky's sons and daughters gathered from all parts of the state and dedicated to the use of the Commonwealth, a new Capitol; and

WHEREAS, Kentucky's Capitol campus is one of America's few state Capitol grounds designed by the Olmsted Brothers, a premier landscape architecture firm started by Frederick Law Olmsted, considered as America's landscape architecture founder; and

WHEREAS Kentucky's Capitol, considered to be one of the most beautiful Capitol buildings in the United States, will celebrate its 100th anniversary on June 10, 2010; and

WHEREAS, it is appropriate for the Commonwealth of Kentucky to plan and conduct appropriate tributes, celebrations, programs, and activities to recognize the important role that Kentucky's Capitol has played during its 100 years and to coordinate the many organizations, agencies, businesses, and individuals interested in recognizing the historic importance of the building which symbolizes Kentucky's government;

NOW, THEREFORE,

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

**➔SECTION 1. A NEW SECTION OF KRS CHAPTER 171 IS CREATED TO READ AS FOLLOWS:**

***There is hereby created the Kentucky Capitol Centennial Commission, which shall be attached to the Division of Historic Properties for administrative purposes. The commission shall be composed of twenty-three (23) members, as follows:***

- (1) Two (2) members of the House of Representatives, appointed by the Speaker of the House;***
- (2) Two (2) members of the Senate, appointed by the President of the Senate;***
- (3) The First Lady of the Commonwealth of Kentucky or her designee;***
- (4) The secretary of the Economic Development Cabinet or his or her designee;***
- (5) The secretary of the Tourism, Arts and Heritage Cabinet, or his or her designee;***
- (6) The commissioner of the Kentucky Department of Libraries and Archives;***
- (7) The director and state curator of the Division of Historic Properties;***
- (8) The chairperson of the Historic Properties Advisory Commission;***

- (9) *The executive director of the Kentucky Arts Council;*
- (10) *The chairperson of the Kentucky Heritage Council;*
- (11) *The executive director of the Kentucky Heritage Council;*
- (12) *The executive director of the Kentucky Historical Society;*
- (13) *The president of the Kentucky Historical Society;*
- (14) *A representative of Kentucky State University, appointed by the president of the university;*
- (15) *The judge/executive of Franklin County;*
- (16) *The mayor of the city of Frankfort;*
- (17) *The executive director of the Frankfort Area Chamber of Commerce;*
- (18) *The executive director of the Frankfort/Franklin County Tourism Commission; and*
- (19) *Three (3) citizen members, one (1) of whom shall be less than thirty-five (35) years of age, from the state at large, with a demonstrated interest in Kentucky's history and substantial knowledge and appreciation of the new Capitol building, appointed by the Governor.*

*The chair of the commission shall be elected by the members from the membership of the commission.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 171 IS CREATED TO READ AS FOLLOWS:

*The Kentucky Capitol Centennial Commission shall:*

- (1) *Study and recommend activities that may be conducted throughout the Commonwealth to celebrate the 100th anniversary of Kentucky's Capitol;*
- (2) *Educate Kentucky's citizens and the nation about Kentucky's Capitol;*
- (3) *Assist area development districts, local governments, school systems, businesses, organizations, and individuals with planning and preparation of events and projects to educate Kentuckians in all regions of the state about the significance of Kentucky's Capitol;*
- (4) *Serve as the coordinating point for information about the various state, regional, and local activities occurring in Kentucky to celebrate the Capitol's centennial anniversary;*
- (5) *Plan and implement the Capitol's centennial anniversary celebration;*
- (6) *Recommend temporary or permanent improvements to the Capitol grounds to make them more amenable to activities associated with the centennial anniversary;*
- (7) *Perform other duties necessary to highlight the role of Kentucky's Capitol in the Commonwealth's history and for decades to come; and*
- (8) *Seek grants and philanthropic support for activities celebrating the centennial anniversary of Kentucky's Capitol.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 171 IS CREATED TO READ AS FOLLOWS:

*The Kentucky Capitol Centennial Commission shall expire on June 10, 2011.*

**Signed by the Governor March 20, 2009.**

## CHAPTER 44

### (HB 352)

AN ACT relating to the Court of Justice.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 23A IS CREATED TO READ AS FOLLOWS:

*The Sixteenth Judicial Circuit is entitled to five (5) judges and shall have five (5) numbered divisions of the Circuit Court.*

➔Section 2. KRS 23A.050 is amended to read as follows:

The following judicial circuits are entitled to four (4) judges and shall have four (4) numbered divisions of the Circuit Court:

- (1) Eighth Judicial Circuit.
- (2) Ninth Judicial Circuit.
- (3) ~~Sixteenth Judicial Circuit.~~
- (4) Twenty-fifth Judicial Circuit.

➔Section 3. KRS 24A.060 is amended to read as follows:

The following judicial districts are entitled to three (3) District Judges and shall have three (3) numbered divisions of the District Court:

- (1) Sixth Judicial District.
- (2) Eighth Judicial District.
- (3) *Sixteenth Judicial District;*
- (4) Twenty-fifth Judicial District.

➔Section 4. The following KRS section is repealed:

24A.070 Sixteenth Judicial District.

➔Section 5. Sections 1 and 2 of this Act shall take effect on August 1, 2010. Sections 3 and 4 of this Act shall take effect on January 3, 2011.

**Signed by the Governor March 20, 2009.**

## CHAPTER 45

### (SJR 67)

A JOINT RESOLUTION on development of state-owned oil and gas resources.

WHEREAS, there is an undetermined, but potentially significant, volume of natural gas and petroleum in formations beneath state-owned recreational and other public lands; and

WHEREAS, some general estimates have placed as much as a forty million dollar (\$40,000,000) annual value on those state-wide resources; and

WHEREAS, state-owned and university-owned recreational and other public lands are dedicated to and managed for an array of values and uses, some of which are more or less compatible with the surface disturbance, noise, and surface activities associated with oil and natural gas exploration, drilling, production, compression, and transmission; and

WHEREAS, on federal lands in the Commonwealth, oil and natural gas production activity has been undertaken for years, and the University of Kentucky has oil and gas operations outside the Commonwealth that provides needed revenues to that institution; and

WHEREAS, oil and gas production on state-owned lands occurs in states like Montana and the Dakotas, data from which can enhance the information from federal lands in the Commonwealth regarding the nature, extent, and mitigation of impacts; and

WHEREAS, the development of oil and gas reserves on certain lands, due to the sensitivities of those lands from a biological, historical, or cultural perspective may be controversial, steps can be taken to establish a permitting process that takes into account lands that are unsuitable for oil and gas development;

NOW, THEREFORE,

***Be it resolved by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. The General Assembly hereby directs the Department for Energy Development and Independence to enter into a memorandum of agreement with the Kentucky Geological Survey at the University of Kentucky to conduct research, either on its own or in collaboration with or under contract with other entities, to quantify the potential oil and natural gas resources on state-owned and university-owned properties. The study shall identify, in addition, factors that may limit development of those resources. The Kentucky Geological Survey, with the assistance of the Department for Energy Development and Independence, is directed to request information from Finance and Administration, various agencies that engage in state land acquisition including the state universities, on the whereabouts and ownership of the lands held by state universities and state-owned lands in the Commonwealth. The Finance and Administration Cabinet shall assist in the delineation of in-fee acquisitions held by the state where the state owns the subsurface estate.

➔Section 2. The Department for Energy Development and Independence shall develop a set of comprehensive conditions for a regulatory program to protect public safety and the environment for permitting oil and gas operations on state-owned and university owned lands in the Commonwealth. The program shall ensure that off-site disturbances to or interference with the purposes for which the lands are dedicated and managed would be minimized, including the protection of federal and state rare, threatened, and endangered species, avoiding damage to properties listed on the National Register of Historic Properties, and assuring compliance with air, waste, surface, and ground water laws and regulations, including state water quality standards. Additionally, the Department for Energy Development and Independence shall, with the assistance of The Finance and Administration Cabinet, develop model lease and oversight guidelines to assure that the undertaking of any oil and gas leasing would be conducted in accordance with state law.

➔Section 3. The Department for Energy Development and Independence shall report its findings to the Legislative Research Commission by December 1, 2009.

**Signed by the Governor March 20, 2009.**

## CHAPTER 46

### (HB 39)

AN ACT relating to motor vehicle operator's licenses.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS 186.400 TO 186.650 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding Sections 3, 4, and 5 of this Act, a person who is under eighteen (18) years of age may apply for an operator's license if the person has:*
  - (a) *Held an instruction permit for a minimum of one hundred eighty (180) days; and*
  - (b) *Enlisted in the United States Armed Forces or a state National Guard.*
- (2) *An individual eligible to apply for an operator's license under this section shall present proof of enlistment at the time of application.*

➔Section 2. KRS 186.412 is amended to read as follows:

- (1) (a) *A person who was under the age of eighteen (18) years at the time of application for an instruction permit and is eighteen (18) years of age or older may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least one hundred eighty (180) days and has completed a driver training program under KRS 186.410 (4).*
- (b) *A person who has attained the age of eighteen (18) years and is under the age of twenty-one (21) at the time of application for an instruction permit may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least one hundred eighty (180) days.*
- (c) *A person who is at least twenty-one (21) years of age at the time of application for an instruction permit may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least thirty (30) days.*

- (2) Except as provided in subsection (4) of this section, a person shall apply for an operator's license in the office of the circuit clerk of the county where the person lives. The application form shall require the person's:
- (a) Full legal name and signature;
  - (b) Date of birth;
  - (c) Social Security number, federal tax identification number, a letter from the Social Security Administration declining to issue a Social Security number, or a notarized affidavit from the applicant to the Transportation Cabinet swearing that the person either does not have a Social Security number, or refuses to divulge his or her Social Security number, based upon religious convictions;
  - (d) Sex;
  - (e) Present Kentucky resident address, exclusive of a post office box address alone;
  - (f) Other information necessary to permit the application of United States citizens to also serve as an application for voter registration;
  - (g) A brief physical description of the applicant;
  - (h) A statement if the person has previously been licensed as an operator in another state;
  - (i) Proof of the person's Kentucky residency, including but not limited to a deed or property tax bill, utility agreement or utility bill, or rental housing agreement; and
  - (j) Other information the cabinet may require by administrative regulation promulgated under KRS Chapter 13A.
- (3) A permanent resident shall present one (1) of the following documents issued by the United States Department of Justice, Immigration and Naturalization Service:
- (a) An I-551 card with a photograph of the applicant; or
  - (b) A form with the photograph of the applicant or a passport with a photograph of the applicant on which the United States Department of Justice, Immigration and Naturalization Service has stamped the following: "Processed for I-551. Temporary evidence of lawful admission for permanent residence. Valid until -----. Employment authorized."
- (4) If the person is not a United States citizen and has not been granted status as a permanent resident of the United States, the person's application for an original operator's license shall be submitted to either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.
- (a) The application form shall be accompanied by the person's documentation issued by the United States Department of Justice, Immigration and Naturalization Service, authorizing the person to be in the United States and, if applicable, the person's international driving permit. The application form of a special status individual with a K-1 status shall be accompanied by an original or certified copy of the person's completed marriage license signed by the official who presided over the marriage ceremony and two (2) witnesses. The application form of a special status individual with a K-1 status shall also include the person's petition to enter the United States for the purpose of marriage that contains the name of the prospective spouse. If the name of the prospective spouse on the petition does not match the name of the spouse on the marriage license, the Transportation Cabinet shall not be required to issue an operator's license.
  - (b) The Transportation Cabinet shall, within fifteen (15) days of receipt of the application, review the person's documentation and determine if the person will be issued a Kentucky operator's license. If the review of an application will take longer than fifteen (15) days, the cabinet shall continue the review, but the cabinet shall be required to make a determination in all cases within thirty (30) days of receipt of the application.
  - (c) If the cabinet determines the person may be issued an operator's license, the cabinet shall issue the person an official form that the person shall take to the office of the circuit clerk of the county where the person resides. The circuit clerk shall review the person's documentation and the official form issued by the Transportation Cabinet. If the documentation is verified as accurate, and if the person successfully

completes the examinations required under KRS 186.480, the circuit clerk shall issue the person a Kentucky operator's license.

- (d) Except as provided in paragraphs (e) and (f) of this subsection, a person who is not a United States citizen and who has not been granted status as a permanent resident of the United States shall apply to renew an operator's license, or obtain a duplicate operator's license, in the office of the circuit clerk in the county in which the person resides.
  - (e) If a person is renewing an operator's license or is applying for a duplicate license after July 15, 2002, and the person's documentation issued by the United States Department of Justice, Immigration and Naturalization Service, has not been reviewed by either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office under the provisions of this subsection, the person shall be required to apply for the renewal or duplicate with either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.
  - (f) If a person has any type of change in the person's immigration status, the person shall apply to renew an operator's license with either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.
- (5) The circuit clerk shall issue an operator's license bearing a color photograph of the applicant and other information the cabinet may deem appropriate. The photograph shall be taken by the circuit clerk so that one (1) exposure will photograph the applicant and the application simultaneously. When taking the photograph, the applicant shall be prohibited from wearing sunglasses or any other attire that obscures any features of the applicant's face as determined by the clerk. The clerk shall require an applicant to remove sunglasses or other obscuring attire before taking the photograph required by this subsection. Any person who refuses to remove sunglasses or other attire prohibited by this section as directed by the clerk shall be prohibited from receiving an operator's license. The operator's license issued by the cabinet shall not contain the applicant's Social Security number. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A that develop a numbering system that uses an identification system other than Social Security numbers. If an applicant does not have a Social Security number, or the applicant has submitted a notarized affidavit refusing to divulge his or her Social Security number based upon religious convictions, the Transportation Cabinet shall assign the applicant a unique identifying number. The license shall also designate by color coding and use the phrase "under 21" if the licensee is under the age of twenty-one (21); "CDL" if the license is issued pursuant to KRS Chapter 281A; or "under 21 CDL" if the licensee holds a commercial driver's license issued pursuant to KRS Chapter 281A and is under the age of twenty-one (21).
- (6) Every applicant shall make oath to the circuit clerk as to the truthfulness of the statements contained in the form.
- (7) (a) Except as provided in subsection (8) of this section, the circuit clerk shall issue a color photo personal identification card to any person who is a Kentucky resident and who resides in the county who complies with the provisions of this section and who applies in person in the office of the circuit clerk. An application for a personal identification card shall be accompanied by the same information as is required for an operator's license under subsection (2) of this section, except if a person does not have a fixed, permanent address, the person may use as proof of residency a signed letter from a homeless shelter, health care facility, or social service agency currently providing the person treatment or services and attesting that the person is a resident of Kentucky.
- (b) It shall be permissible for the application form for a personal identification card to include as a person's most current resident address a mailing address, post office box, or an address provided on a voter registration card.
- (c) Every applicant for a personal identification card shall make an oath to the circuit clerk as to the truthfulness of the statements contained on the application form. If the applicant is not the legal owner or possessor of the address provided on the application form, the applicant shall swear that he or she has permission from the legal owner, authorized agent for the legal owner or possessor to use the address for purposes of obtaining the personal identification card. The personal identification card shall designate by color coding and by use of the phrase "under 21" if the applicant is under the age of twenty-one (21).
- (d) A personal identification card shall be valid for a period of four (4) years from the date of issuance. Except as provided in this subsection, an initial or renewal personal identification card issued to a person who is not a United States citizen and who has not been granted status as a permanent resident of

the United States and who is not a special status individual, but who is a Kentucky resident, shall be valid for a period equal to the length of time the person's documentation from the United States Department of Justice, Immigration and Naturalization Service is issued, or four (4) years, whichever time period is shorter. An initial or renewal personal identification card shall be valid for a period of two (2) years if the person is not a special status individual and the person's documentation issued by the United States Department of Justice, Immigration and Naturalization Service, is issued for an indefinite period of time and does not have an expiration date. The fee shall be the same as for a regular personal identification card.

- (e) A personal identification card may be suspended or revoked if the person who was issued the card presents false or misleading information to the cabinet when applying for the card.
- (8) A person may be issued a personal identification card if the person currently holds a valid Kentucky instruction permit or operator's license. If a person's instruction permit or operator's license has been suspended or revoked, the person may be issued a temporary personal identification card. A temporary personal identification shall be renewed annually and may be surrendered when the person applies to have his or her instruction permit or operator's license reinstated.
- (9) The Transportation Cabinet shall implement a voluntary statewide child identification program. The program shall issue a color photo personal identification card to a child two (2) to fifteen (15) years of age. Application for a child identification card shall be accompanied by a Social Security card and a birth certificate for the child or other proof of the child's date of birth as provided under subsection (2) of this section. The card shall contain the child's name and the toll-free number of the Kentucky Missing Persons Clearinghouse, Department of Kentucky State Police. The card shall not contain the child's Social Security number. The cabinet shall set a four dollar (\$4) fee for the child identification card. Two dollars (\$2) of the fee shall be used to cover the cabinet's cost for equipment and supplies. Two dollars (\$2) of the fee shall be an administrative fee of the circuit clerk for issuing the card which shall be deposited by the Administrative Office of the Courts into a trust and agency account for the circuit clerks and used for the purposes of hiring additional deputy clerks and providing salary adjustments to deputy clerks. The card shall expire every four (4) years on the child's birthday. Within the time period that the child identification card is valid, the card may be updated with a new photograph and information. The fee for an updated card shall be four dollars (\$4), with two dollars (\$2) of the fee going to the cabinet and two dollars (\$2) going to the Administrative Office of the Courts in the same manner as the fee for an initial card as described in this subsection. The descriptive data and a photo image of the child shall be stored in the Kentucky Driver's License Information System and may be retrieved and used by public agencies subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. sec. 2721, and may also be used by the Kentucky Missing Persons Clearinghouse.
- (10) If a citizen of the Commonwealth currently serving in the United States military is stationed or assigned to a base or other location outside the boundaries of the Commonwealth, the citizen may renew a Class D operator's license issued under this section by mail. If the citizen was issued an "under 21" operator's license, upon the date of his or her twenty-first birthday, the "under 21" operator's license may be renewed for an operator's license that no longer contains the outdated reference to being "under 21."
- (11) A citizen of the Commonwealth renewing an operator's license by mail under subsection (10) of this section may have a personal designee apply to the circuit clerk on behalf of the citizen to renew the citizen's operator's license. An operator's license being renewed by mail under subsection (10) of this section shall be issued a license without a photograph. The license shall show in the space provided for the photograph the legend "valid without photo and signature."
- (12) (a) If a citizen of the Commonwealth has been serving in the United States military stationed or assigned to a base or other location outside the boundaries of the Commonwealth and has allowed his or her operator's license to expire, he or she shall, within ninety (90) days of returning to the Commonwealth, be permitted to renew his or her license without having to take a written test or road test.  
(b) A citizen who meets the criteria in paragraph (a) of this subsection shall not be convicted or cited for driving on an expired license prior to license renewal during the ninety (90) days after the person's return to the Commonwealth if the person can provide proof of his or her out-of-state service and dates of assignment.

- (c) A citizen who meets the criteria in paragraph (a) of this subsection and who does not renew his or her license within ninety (90) days of returning to the Commonwealth shall be required to comply with the provisions of this chapter governing renewal of a license that has expired.
  - (d) If a citizen of the Commonwealth has been issued an "under 21" or "under 21 CDL" operator's license and the person is unable to renew the license on the date of his twenty-first birthday, the "under 21" or "under 21 CDL" operator's license shall be valid for ninety (90) days beyond the date of the person's twenty-first birthday.
- (13) The cabinet shall provide on each license to operate motor vehicles, motorcycles, and mopeds a space for the licensed driver's:
- (a) Blood type;
  - (b) Medical insignia if the person provides evidence that a medical identification bracelet noting specific physical ailments or a drug allergy is being worn or other proof as may be required by the cabinet; and
  - (c) A statement whereby the owner of the license may certify in the presence of two (2) witnesses his willingness to make an anatomical gift under KRS 311.195.
- (14) If the motor vehicle operator denotes a physical ailment or drug allergy on the operator's license, he may apply for and shall receive, for a fee of one dollar (\$1) paid to the circuit clerk, a medical insignia decal that may be affixed to the lower left side of the front windshield of a motor vehicle.
- (15) An operator's license pursuant to this section shall be designated a Class D license.
- (16) A person shall not have more than one (1) license.
- (17) Upon marriage, a woman applying for an operator's license or a color photo personal identification card shall provide the circuit clerk with her marriage license and complete an affidavit form provided by the circuit court clerk. She shall have the following choices in regard to her full legal name as required in subsections (2) and (7) of this section:
- (a) Use her husband's last name;
  - (b) Retain her maiden name;
  - (c) Use her maiden name hyphenated with her husband's last name;
  - (d) Use her maiden name as a middle name and her husband's last name as her last name; or
  - (e) In the case of a previous marriage, retain that husband's last name.
- (18) Upon issuing an operator's license or personal identification card, the clerk shall draw the recipient's attention to the location on the license relating to anatomical gifts under subsection (13)(c) of this section and offer to allow personnel in the clerk's office to serve as the witnesses to the recipient's certification of willingness to make an anatomical gift if the recipient is the person to whom the license is issued.

➔Section 3. KRS 186.450 is amended to read as follows:

- (1) A person who is at least sixteen (16) years of age may apply for an instruction permit to operate a motor vehicle. A person who possesses a valid motor vehicle operator's license or a person who is at least eighteen (18) years of age may apply for an instruction permit to operate a motorcycle. A holder of either a motor vehicle or motorcycle instruction permit may also operate a moped under that permit. A person applying for an instruction permit under this section shall make application in the office of the circuit clerk in the county where the person lives. A person applying for an instruction permit shall be required to comply with the following:
  - (a) If the person is under the age of eighteen (18), the instruction permit application shall be signed by the applicant's parent or legal guardian. If the person does not have a living parent or does not have a legal guardian, the instruction permit application shall be signed by a person willing to assume responsibility for the applicant pursuant to KRS 186.590; and
  - (b) All applicants for an instruction permit shall comply with the examinations required by KRS 186.480.
- (2) If an applicant successfully passes the examinations required by KRS 186.480, the applicant shall be issued an instruction permit upon payment of a six dollar (\$6) fee pursuant to KRS 186.531.
- (3) (a) An instruction permit shall be valid for three (3) years and may be renewed.

- (b) ***Except as provided in Section 1 of this Act***, a person who has attained the age of sixteen (16) years and is under the age of eighteen (18) years ~~[at the time of application for an instruction permit]~~ shall have the instruction permit a minimum of one hundred eighty (180) days before applying for an intermediate license and shall have an intermediate license for a minimum of one hundred eighty (180) days before applying for an operator's license.
  - (c) ***A person who was under eighteen (18) years of age at the time of application for an instruction permit and is eighteen (18) years of age or older shall have the instruction permit a minimum of one hundred eighty (180) days and complete a driver training program under KRS 186.410(4) before applying for an operator's license.***
  - (d) A person who is at least eighteen (18) years of age and is under the age of twenty-one (21) years at the time of application for an instruction permit shall have the instruction permit a minimum of one hundred eighty (180) days before applying for an operator's license.
  - (e) A person who is at least twenty-one (21) years of age at the time of application for an instruction permit shall have the instruction permit a minimum of thirty (30) days before applying for an operator's license.
- (4) A person shall have the instruction permit in his possession at all times when operating a motor vehicle, motorcycle, or moped upon the highway. When operating a motor vehicle, a motor vehicle instruction permit holder shall be accompanied by a person with a valid operator's license who is at least twenty-one (21) years of age occupying the seat beside the operator at all times.
  - (5) A person with an instruction permit who is under the age of eighteen (18) shall not operate a motor vehicle, motorcycle, or moped between the hours of 12 midnight and 6 a.m. unless the person can demonstrate good cause for driving, including but not limited to emergencies, involvement in school-related activities, or involvement in work-related activities.
  - (6) Except when accompanied by a driver training instructor affiliated with a driver training school licensed under KRS Chapter 332 or a public or nonpublic secondary school, a person with an instruction permit who is under the age of eighteen (18) years shall not operate a motor vehicle at any time when accompanied by more than one (1) unrelated person who is under the age of twenty (20) years. A peace officer shall not stop or seize a person nor issue a uniform citation for a violation of this subsection if the officer has no other cause to stop or seize the person other than a violation of this subsection. This subsection shall not apply to any operator of a vehicle registered under the provisions of KRS 186.050(4) who is engaged in agricultural activities.
  - (7) A violation under subsection (4), (5), or (6) of this section, a conviction for a moving violation under KRS Chapter 189 for which points are assessed by the cabinet, or a conviction for a violation of KRS 189A.010(1) shall add an additional minimum of one hundred eighty (180) days from the date of the violation before a person who is under the age of eighteen (18) years may apply for an intermediate license to operate a motor vehicle, motorcycle, or moped.
  - (8) A person under the age of eighteen (18) who accumulates more than six (6) points against his driving privilege may have the driving privilege suspended pursuant to KRS Chapter 186 or probated by the court.
  - (9) An applicant for relicensing after revocation shall pay the clerk a fee of twenty-five dollars (\$25). The twenty-five dollar (\$25) fee shall not apply to any person whose license was suspended for failure to meet the conditions described in KRS 186.411 when, within one (1) year of suspension, the driving privileges of such individuals are reinstated and persons reinstated pursuant to KRS 159.051.

➔Section 4. KRS 186.452 is amended to read as follows:

- (1) ***Except as provided in Section 1 of this Act*** ~~[Beginning April 1, 2007]~~, a person who is ***under eighteen (18)*** ~~[at least sixteen and one half (16 1/2)]~~ years of age may apply for an intermediate license to operate a motor vehicle if the person has:
  - (a) Held an instruction permit a minimum of one hundred eighty (180) days without a violation under KRS 186.450(4), (5), or (6), a conviction for a moving violation under KRS Chapter 189 for which points are assessed by the cabinet, or a conviction for a violation of KRS 189A.010(1); and
  - (b) Presented a statement to the Department of Kentucky State Police signed by a parent or guardian of the applicant attesting that the applicant has completed at least sixty (60) hours of supervised driving experience, including at least ten (10) hours at night, while accompanied by a person who has attained

the age of twenty-one (21) years and holds a valid operator's license occupying the seat beside the applicant.

- (2) If an applicant for an intermediate license successfully completes the examinations required under KRS 186.480, the Department of Kentucky State Police shall affix an intermediate license sticker to the instruction permit and report the applicant's new status to the Transportation Cabinet. The Transportation Cabinet shall update the information in its computer system to reflect that the applicant has been granted an intermediate license. An intermediate license shall be valid for two (2) years and may be renewed.
- (3) A person shall have the intermediate license in his or her possession at all times when operating a motor vehicle.
- (4) A person with an intermediate license who is under the age of eighteen (18) years shall not operate a motor vehicle, motorcycle, or moped between the hours of 12 midnight and 6 a.m. unless the person can demonstrate good cause for driving, including emergencies, involvement in school-related activities, or involvement in work-related activities.
- (5) Except when accompanied by a driver training instructor affiliated with a driver training school licensed under KRS Chapter 332 or a public or nonpublic secondary school, a person with an intermediate license who is under the age of eighteen (18) years shall not operate a motor vehicle at any time when accompanied by more than one (1) unrelated person who is under the age of twenty (20) years. A peace officer shall not stop or seize a person nor issue a uniform citation for a violation of this subsection if the officer has no other cause to stop or seize the person other than a violation of this subsection. This subsection shall not apply to any operator of a vehicle registered under the provisions of KRS 186.050(4) who is engaged in agricultural activities.
- (6) A violation under subsection (3), (4), or (5) of this section, a conviction for a moving violation under KRS Chapter 189 for which points are assessed by the cabinet, or a conviction for a violation of KRS 189A.010(1) shall add an additional minimum of one hundred eighty (180) days from the date of the violation before a person who is under the age of eighteen (18) years may apply for an operator's license.

➔Section 5. KRS 186.454 is amended to read as follows:

- (1) *Except as provided in Section 1 of this Act*~~[Beginning October 1, 2007]~~, a person with an intermediate license who is under the age of eighteen (18) years may apply for an operator's license to operate a motor vehicle if the person has:
  - (a)~~(1)~~ Held an intermediate license for a minimum of one hundred eighty (180) days without a conviction for a moving violation under KRS Chapter 189 for which points are assessed by the cabinet, a conviction for a violation of KRS 189A.010(1), or a conviction under KRS 186.452(3), (4), or (5); and
  - (b)~~(2)~~ Completed a driver training program under KRS 186.410(4).
- (2) *A person with an intermediate license who is eighteen (18) years of age or older may apply for an operator's license to operate a motor vehicle if the person has completed a driver training program under KRS 186.410(4).*

**Signed by the Governor March 20, 2009.**

## CHAPTER 47

### (HB 55)

AN ACT relating to firearms certification.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 237.140 is amended to read as follows:

- (1) (a) Certification for a retired peace officer to carry a concealed deadly weapon pursuant to KRS 237.138 to 237.142 shall be administered by the Department of Kentucky State Police.
- (b) Costs of certification shall be paid for by moneys generated by the concealed deadly weapon license program under KRS 15.383 and collected by the Department of Kentucky State Police pursuant to that section.

- (c) The Department of Kentucky State Police shall promulgate administrative regulations in accordance with KRS Chapter 13A necessary to implement the provisions of KRS 237.138 to 237.142.
- (2) Each retired peace officer who desires certification to carry a concealed deadly weapon shall annually submit:
  - (a) Evidence of retired status to the commissioner of the Department of Kentucky State Police together with all information required by federal law, this section, and administrative regulations promulgated pursuant to this section;
  - (b) Evidence of successful completion of firearms qualification required under this section; and
  - (c) A notarized statement that he or she is not prohibited by state or federal law from possessing a firearm.
- (3) Each law enforcement agency that employed the retired peace officer, or at which the retired peace officer served in an elected capacity, shall provide to the retired officer and the Department of Kentucky State Police the information required by federal law, this section, and the administrative regulations promulgated pursuant to this section in a prompt and efficient manner, without charge either to the Department of Kentucky State Police or the retiree.
- (4)
  - (a) Each retired peace officer shall annually fire twenty (20) rounds at an adult size silhouette target at a range of twenty-one (21) feet, with a handgun, and shall hit the target not less than eleven (11) times to obtain or maintain certification under KRS 237.138 to 237.142.
  - (b) The rounds fired pursuant to paragraph (a) of this subsection shall be done under the supervision of:
    - 1. A firearms instructor of the retiree's former employing agency;
    - 2. ***A currently certified peace officer who has successfully completed a Kentucky Law Enforcement Council approved firearms instructor course;***
    - 3. A Department of Criminal Justice Training certified police firearms instructor or instructor trainer; or
    - 4.~~3.~~ A Department of Criminal Justice Training certified concealed carry instructor or instructor trainer.
  - (c) A firearms instructor may, if not compensated pursuant to paragraph (d) of this subsection, charge each participant a fee of not more than twenty dollars (\$20), which shall include the cost of the range, firearms instructor, range personnel, targets, and all other costs associated therewith, but not the cost of ammunition. Ammunition, or the cost of ammunition, shall be provided by the retiree.
  - (d) A local or state law enforcement agency that desires to conduct firearms qualification for its retirees shall schedule not less than two (2) dates for firearms qualification per year, and those dates shall be approximately six (6) months apart. The local or state law enforcement agency may charge each participant a fee of not more than twenty dollars (\$20), which shall include the cost of use of the range, firearms instructor, range personnel, targets, and all other costs associated therewith, but not the cost of ammunition. Ammunition, or the cost of ammunition, shall be provided by the retiree.
  - (e) No employer or appointing authority of a firearms instructor ***who has successfully completed a Kentucky Law Enforcement Council approved firearms instructor course***, Department of Criminal Justice Training certified police firearms instructor or instructor trainer, or Department of Criminal Justice Training certified concealed carry instructor or instructor trainer shall prohibit or in any way limit the instructor from qualifying active or retired peace officers in conformity with KRS 237.138 or 237.142 while that instructor is off duty. No employer or appointing authority of an instructor specified in this paragraph shall be liable in civil damages for the actions or omissions of the instructor during qualification of active or retired peace officers when that instructor is off duty.

**Signed by the Governor March 20, 2009.**

## CHAPTER 48

## (HB 73)

AN ACT relating to art therapy.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 309.130 is amended to read as follows:

As used in KRS 309.130 to 309.1399, unless the context otherwise requires:

- (1) "Board" means the Kentucky Board of ~~Licensure~~~~[Certification]~~ for Professional Art Therapists;
- (2) "~~Licensed~~~~[Certified]~~ professional art therapist" means a person who has completed a master's or doctoral degree program in art therapy, or an equivalent course of study, from an accredited educational institution, **has completed all of the requirements set out in this chapter, and has been issued a license**~~[who is certified]~~ by the board;
- (3) "~~License~~~~[Certificate]~~ holder" means a ~~licensed~~~~[certified]~~ professional art therapist ~~licensed~~~~[certified]~~ under the provisions of KRS 309.130 to 309.1399;~~[and]~~
- (4) **"The practice of professional art therapy" means the integrated use of psychotherapeutic principles, visual art media, and the creative process in the assessment, treatment, and remediation of psychosocial, emotional, cognitive, physical, and developmental disorders in children, adolescents, adults, families, and groups. Nothing in this section shall be construed to authorize any licensed professional art therapist to administer or interpret psychological tests in accordance with the provisions of KRS Chapter 319; and**
- (5) "Accredited institution" means a university or college accredited by a nationally-recognized accrediting agency of institutions of higher education, or an institution or clinical program approved by the American Art Therapy Association, Inc.

➔Section 2. KRS 309.1305 is amended to read as follows:

- ~~(1) The provisions of KRS 309.130 to 309.1399 shall not apply to persons licensed, certified, or registered under any other provision of the Kentucky Revised Statutes, including, but not limited to, physicians, social workers, psychologists, and nurses, or students within accredited training programs of these professions. Nothing in KRS 309.130 to 309.1399 shall be construed to limit, interfere with, or restrict the practice, descriptions of services, or manner in which these persons hold themselves out to the public.~~
- ~~(2) No person shall use the title ~~licensed~~~~[certified]~~ professional art therapist or use "LPAT" or a title or letters that are substantially the same, or hold himself or herself out as having this status unless he or she is ~~licensed~~~~[certified]~~ by the board.~~
- (2) **No person shall engage in the practice of art therapy unless he or she is licensed under KRS 309.130 to 309.1399.**
- (3) **The provisions of KRS 309.130 to 309.1399 shall not apply to persons licensed, certified, or registered under any other provision of the Kentucky Revised Statutes, including but not limited to physicians, physical therapists, occupational therapists, social workers, psychologists, and nurses, or students within accredited training programs of these professions. Nothing in KRS 309.130 to 309.1399 shall be construed to limit, interfere with, or restrict the practice, descriptions of services, or manner in which these persons hold themselves out to the public.**
- (4) **Nothing in KRS 309.130 to 309.1399 shall be construed to alter, amend, or interfere with the practice of employment counseling, job placement counseling, or school counseling.**
- (5) **Nothing in KRS 309.130 to 309.1399 shall be construed to apply to the activities and services of a student intern or trainee in art therapy who is pursuing a program of studies in art therapy at an accredited institution of higher learning if the activities are performed under the supervision of a licensed art therapist and constitute a part of the supervised program of study and if the person is designated as an art therapist intern or student in training.**

➔Section 3. KRS 309.131 is amended to read as follows:

- (1) There is hereby created the Kentucky Board of **Licensure**~~[Certification]~~ for Professional Art Therapists *that shall be attached to the Division of Occupations and Professions in the Finance and Administration Cabinet for administrative purposes*. The board shall consist of five (5) members who are United States citizens and have been Kentucky residents for at least five (5) years prior to their appointment. The board membership shall be determined as follows:
  - (a) Four (4) members shall be professional art therapists who are **licensed**~~[certified]~~ pursuant to KRS 309.133, and shall have engaged in art therapy practice for at least five (5) years. These members shall not hold any elected or appointed office in any professional organization of art therapy or closely related field during their tenure on the board~~[- The initial four (4) professional members shall meet requirements for certification and be certified within one (1) year after July 15, 1994];~~ and
  - (b) One (1) member shall represent the public. The public member shall not have been **licensed**~~[certified]~~ or have practiced as a professional art therapist, nor have any significant financial interest, either direct or indirect, in the profession of art therapy.
- (2) All members of the board shall be appointed by the Governor for staggered terms of four (4) years.
- (3) ~~[Initially,]~~ The four (4) professional members shall be appointed from a list of eight (8) names submitted by the board of directors of the Kentucky Art Therapy Association, Inc., and the one (1) public member shall ~~[- be appointed by the Governor and shall]~~ be a citizen at large.~~[- The initial board shall be appointed so that the term of one (1) professional member expires within one (1) year of the initial appointment of the board, the term of one (1) professional member expires within two (2) years of the appointment of the initial board, and the term of one (1) professional member expires within three (3) years of the appointment of the initial board. The public member and the fourth professional member shall serve a full four (4) years term on the initial board.]~~ Each member shall hold office until a successor is appointed. Vacancies shall be filled in the same manner as original appointments. No **board member**~~[appointee]~~ shall serve more than two (2) *consecutive* terms.
- (4) ~~[Beginning July 1, 1996,]~~ Each board candidate shall be **licensed**~~[certified]~~ as an art therapist prior to nomination and shall be actively engaged in the practicing or teaching of art therapy, except for the one (1) public member.
- (5) Members of the board shall receive no compensation, perquisite, or allowance.
- (6) The board shall elect annually from its membership a chairman, secretary, and other officers as necessary to carry out its duties.
- (7) The board shall meet at least two (2) times each year. Additional meetings may be called by the chairman, upon the written request of at least two (2) members of the board. A simple majority of the board members shall constitute a quorum of the board.

➔ Section 4. KRS 309.1315 is amended to read as follows:

The board shall:

- (1) Promulgate administrative regulations necessary to carry out the provisions of KRS 309.130 to 309.1399;
- (2) Select the examinations for **licensure**~~[certification]~~ and administer the examinations at least annually;
- (3) Establish the application deadline for and score required to pass the examinations;
- (4) Process applications and conduct and review the required examinations;
- (5) Issue **licenses**~~[certificates]~~ to applicants who meet the requirements of KRS 309.133 to 309.137;
- (6) Deny, suspend, or revoke a **license**~~[certificate]~~ to practice art therapy;
- (7) Censure, reprimand, or place a **license**~~[certificate]~~ holder or applicant on probation for a period not to exceed one (1) year;
- (8) Maintain a current register of **license**~~[certificate]~~ holders as a matter of public record;
- (9) Establish criteria for continuing education;
- (10) Establish procedures for receiving, investigating, and resolving complaints against **license**~~[certificate]~~ holders;

- (11) Conduct administrative hearings in accordance with KRS Chapter 13B for disciplinary actions taken under authority of subsections (6) and (7) of this section;
- (12) Approve the level of supervision and experience required for persons seeking *licensure*~~{certification}~~;
- (13) Assess fees for the issuance and renewal of *licenses*~~{certificates}~~ to cover administrative and operating expenses of the board, and authorize all disbursements necessary to carry out the provisions of KRS 309.130 to 309.1399;
- (14) Implement an impaired professional art therapist treatment program; and
- (15) Establish a code of ethics for professional art therapists.

➔Section 5. KRS 309.133 is amended to read as follows:

- (1) The board shall issue a *license*~~{certificate}~~ as a *licensed*~~{certified}~~ professional art therapist to any person who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant is at least twenty-one (21) years of age, demonstrates professional competency by satisfactorily passing the required examination, is a registered art therapist as defined by the Art Therapy Credentials Board, Inc., is a *board* certified art therapist as defined by the Art Therapy Credentials Board, Inc., and has:
  - (a) Received a master's degree or doctoral degree in art therapy that includes six hundred (600) hours of supervised internship experience from an accredited institution and has completed an additional one thousand (1,000) client contact hours of postgraduate experience under appropriate supervision; or
  - (b) Received a master's degree or doctoral degree in a related field, has a minimum of twenty-one (21) semester hours of sequential course work in the history, theory, and practice of art therapy, has completed seven hundred (700) hours of supervised internship experience from an accredited institution, and has completed an additional two thousand (2,000) client contact hours of postgraduate experience under appropriate supervision.
- (2) The board may approve on a case-by-case basis applicants who have a master's degree or a doctoral degree from nonaccredited institutions.
- (3) If an applicant has met all of the requirements for *licensure*~~{certification}~~ except satisfactorily passing the required examination, the applicant shall be scheduled to take the next examination following the approval of the *application*~~{examination}~~.
- ~~(4) An applicant for certification as a professional art therapist may be certified without examination if the applicant files a completed application within one (1) year of the effective date of the establishment of the board, accompanied by the required fees, and if the board determines that the applicant meets all other requirements for certification as a professional art therapist.~~
- ~~(5) An applicant for certification as a professional art therapist may be certified without examination if the applicant files a completed application within one (1) year of the effective date of the establishment of the board, accompanied by the required fees, and if the board determines that the applicant meets all other requirements for certification as a professional art therapist.~~
- ~~(6)~~ The board may issue a *license*~~{certificate}~~ to an applicant without examination if the person possesses a valid regulatory document issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia, or any foreign nation that in the judgment of the board has requirements substantially equivalent to or exceeding the requirements in this section.
- ~~(5)~~~~(7)~~ The board may set criteria for continuing education and supervisory experience.

➔Section 6. KRS 309.1335 is amended to read as follows:

- (1) Each *license*~~{certificate}~~ holder shall renew the *license*~~{certificate}~~ to practice art therapy biennially by:
  - (a) Submitting a renewal application on a form provided by the board paying a *license*~~{certificate}~~ renewal fee; and
  - (b) Producing evidence of completion of relevant professional continuing education experience satisfactory to the board and not to exceed forty (40) hours per renewal cycle.

- (2) A ninety (90) day grace period shall be allowed for each *license*~~[certificate]~~ holder after the *licensure*~~[certification]~~ period, during which time the *license*~~[certificate]~~ may be renewed upon payment of the renewal fee, the late fee, and compliance with all renewal requirements.
- (3) Any *license*~~[certificate]~~ granted by the board shall be automatically suspended if the holder fails to apply for the *license*~~[certificate]~~ renewal pursuant to this section within a period of three (3) months after the renewal deadline; however, any suspended *license*~~[certificate]~~ may be restored by the board upon payment of a reinstatement fee not to exceed one hundred dollars (\$100) in addition to any unpaid renewal or late fees. Failure to renew a *license*~~[certificate]~~ within three (3) months from the date of suspension as provided in this section shall cause the *license*~~[certificate]~~ to be automatically revoked. Reinstatement of a revoked *license*~~[certificate]~~ shall require the *license*~~[certificate]~~ holder to reapply and meet all current standards for *licensure*~~[certification]~~.
- (4) A person *licensed*~~[certified]~~ under the provisions of KRS 309.133 who intends to retire as a *licensed*~~[certified]~~ professional art therapist shall notify the board in writing before the expiration of his *or her* current *license*~~[certification]~~. If, within a period of five (5) years from the year of retirement, the *license*~~[certificate]~~ holder wishes to resume practice as a *licensed*~~[certified]~~ professional art therapist, he *or she* shall notify the board in writing, and upon giving proof of completing the required continuing education and the payment of an amount equivalent to elapsed renewal fees, the *license*~~[certificate]~~ shall be restored in full effect.

➔Section 7. KRS 309.135 is amended to read as follows:

The board shall set the amount of the fees required to be paid by the applicants for *licensure*~~[certification]~~ and the *license*~~[certificate]~~ holders including, but not limited to, the following:

- (1) For an application for initial *licensure*~~[certification]~~, the fee shall be nonrefundable and shall not exceed two hundred dollars (\$200);
- (2) To take an examination, the fee shall not exceed one hundred dollars (\$100), or, if a national examination is used, the amount of the fee shall not exceed the cost of the examination by more than twenty-five percent (25%);
- (3) The renewal fee shall not exceed two hundred dollars (\$200);
- (4) For a duplicate or replacement *license*~~[certificate]~~, the fee shall not exceed twenty-five dollars (\$25);
- (5) For failure to renew a *license*~~[certificate]~~ within the allotted grace period pursuant to KRS 309.1335(3), the fee shall not exceed one hundred dollars (\$100); and
- (6) Other reasonable fees for administrative services.

➔Section 8. KRS 309.137 is amended to read as follows:

- (1) The board may *refuse to issue a license or may* deny any application, or suspend, or revoke, *impose probationary conditions upon, issue a written reprimand or admonishment, or perform any combination thereof regarding* any *license*~~[certificate]~~ held or applied for under the provisions of KRS 309.133 if the person:
  - (a) Is found guilty of fraud, deceit, or misrepresentation in procuring *or renewing* or attempting to procure *or renew* a *license*~~[certificate]~~ to practice art therapy;
  - (b) *Committed any unfair, false, misleading, or deceptive act or practice;*
  - (c) *Has been negligent in the practice of art therapy;*
  - (d) Is adjudicated mentally incompetent;
  - (e)~~(e)~~ Is found guilty of a felony or misdemeanor involving *sexual misconduct or a crime where dishonesty is a necessary element. Conviction includes all instances in which a plea of no contest is the basis of the conviction*~~[moral turpitude]~~;
  - (f)~~(d)~~ Is found guilty of unprofessional or unethical conduct in this or any other jurisdiction;
  - (g)~~(e)~~ Has been using any controlled substance or alcoholic beverage to an extent or in a manner dangerous to the person, any other person, or the public, or to an extent that the use impairs the ability to perform as a *licensed*~~[certified]~~ professional art therapist;

~~(h)(f)~~ Has violated any provision of KRS 309.130 to 309.1399 *or administrative regulations promulgated thereunder;*

(i) *Failed to comply with an order issued by the board or an assurance of voluntary compliance;* or

~~(j)(g)~~ Willfully or negligently divulges a professional confidence.

- (2) A certified copy of the record of conviction shall be conclusive evidence of the conviction.
- (3) Disciplinary proceedings may be initiated upon the receipt by the board of a sworn complaint by any person, including members of the board.
- (4) *Two (2) years from the date of revocation any person whose license has been revoked may petition the board for reinstatement. The board shall investigate the petition and may reinstate the licensee if the board finds that the individual has complied with any terms prescribed by the board and is able to competently engage in the practice of art therapy.*
- (5) *If, after an investigation that includes an opportunity for the licensee to respond, the board determines that a violation took place but was not of a serious nature, it may issue a written admonishment to the licensee. A copy of the admonishment shall be placed in the permanent file of the licensee. The licensee shall have the right to file a response to the admonishment within thirty (30) days of its receipt and to have the response placed in the permanent licensure file. The licensee may alternatively, within thirty (30) days of the receipt, file a request for a hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for a hearing under the provisions of KRS Chapter 13B.*
- (6) *The surrender of a license shall not deprive the board of its jurisdiction to proceed with disciplinary actions authorized under KRS 309.130 to 309.1399.*

➔Section 9. KRS 309.138 is amended to read as follows:

There is hereby created in the State Treasury the ~~licensed~~~~certified~~ professional art therapy practice board fund. All funds received by the board under the provisions of KRS 309.133 to 309.137 shall be deposited with the State Treasurer for credit to the ~~licensed~~~~certified~~ professional art therapy board fund. The State Treasurer shall invest the fund as all other state funds are invested and income from investment of the fund shall be credited to the fund. The balance remaining in the fund at the end of any fiscal year shall not revert to the general fund. The money in the ~~licensed~~~~certified~~ professional art therapy board fund shall be appropriated to the board and shall be used for the purpose of carrying out the provisions of KRS 309.130 to 309.1399.

➔SECTION 10. A NEW SECTION OF KRS 309.130 TO 309.1399 IS CREATED TO READ AS FOLLOWS:

- (1) *Before denying, revoking, suspending, imposing probationary or supervisory conditions upon a license, issuing a written reprimand, or doing any combination of those regarding any licensee or applicant under KRS 309.130 to 309.1399, the board shall set the matter for hearing as provided by KRS Chapter 13B.*
- (2) *After revoking, suspending, imposing probationary or supervisory conditions upon a license, issuing a written reprimand, or doing any combination of those regarding a licensee or applicant, the board shall set the matter for a hearing upon the written request of the applicant or licensee within thirty (30) days of the applicant's or licensee's receipt of the letter advising him or her of the denial, refusal, admonishment, revocation, suspension, or other disciplinary action taken.*
- (3) *Any party aggrieved by a final order of the board may appeal to the Circuit Court of the county where the alleged violation occurred as provided by KRS Chapter 13B.*

➔Section 11. KRS 309.1399 is amended to read as follows:

Any person who violates *or aids in the violation of* the provisions of KRS 309.130 to 309.1399 shall *upon conviction be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000)*~~be guilty of a Class A misdemeanor~~.

➔Section 12. Any person who is certified as a professional art therapist on the effective date of this Act shall automatically be licensed on the effective date of this Act and shall be issued a copy of the license at the time his or her certificate was next scheduled to be renewed if at that time the person complies with the provisions of Section 6 of this Act and has not been the subject of disciplinary action under Sections 8 and 10 of this Act.

**Signed by the Governor March 20, 2009.**

## CHAPTER 49

## (HB 87)

AN ACT relating to occupational taxes.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 67.750 is amended to read as follows:

As used in KRS 67.750 to 67.790, unless the context requires otherwise:

- (1) "Business entity" means each separate corporation, limited liability company, business development corporation, partnership, limited partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;
- (2) "Compensation" means wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:
  - (a) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; and
  - (b) Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code;
- (3) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (4) "Employee" means any person who renders services to another person or business entity for compensation, including an officer of a corporation and any officer, employee, or elected official of the United States, a state, or any political subdivision of a state, or any agency or instrumentality of any one (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee;
- (5) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;
- (6) "Gross receipts" means all revenues or proceeds derived from the sale, lease, or rental of goods, services, or property by a business entity reduced by the following:
  - (a) Sales and excise taxes paid; and
  - (b) Returns and allowances;
- (7) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, ~~2008~~~~[2006]~~, ~~as amended~~~~[exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2006, that would otherwise terminate]~~;
- (8) "Net profit" means gross income as defined in Section 61 of the Internal Revenue Code minus all the deductions from gross income allowed by Chapter 1 of the Internal Revenue Code, and adjusted as follows:
  - (a) Include any amount claimed as a deduction for state tax or local tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, local taxing authority in a state, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision thereof;
  - (b) Include any amount claimed as a deduction that directly or indirectly is allocable to income which is either exempt from taxation or otherwise not taxed;
  - (c) Include any amount claimed as a net operating loss carryback or carryforward allowed under Section 172 of the Internal Revenue Code;

- (d) Include any amount of income and expenses passed through separately as required by the Internal Revenue Code to an owner of a business entity that is a pass-through entity for federal tax purposes; and
  - (e) Exclude any amount of income that is exempt from state taxation by the Kentucky Constitution or the Constitution and statutory laws of the United States;
- (9) "Sales revenue" means receipts from the sale, lease, or rental of goods, services, or property;
  - (10) "Tax district" means a city of the first to fifth class, county, urban-county, charter county, consolidated local government, school district, special taxing district, or any other statutorily created entity with the authority to levy net profits, gross receipts, or occupational license taxes;
  - (11) "Taxable gross receipts," in case of a business entity having payroll or sales revenues both within and without a tax district, means gross receipts as defined in subsection (6) of this section, as apportioned under KRS 67.753;
  - (12) "Taxable gross receipts," in case of a business entity having payroll or sales revenue only in one (1) tax district, means gross receipts as defined in subsection (6) of this section;
  - (13) "Taxable net profit," in case of a business entity having payroll or sales revenue only in one (1) tax district, means net profit as defined in subsection (8) of this section;
  - (14) "Taxable net profit," in case of a business entity having payroll or sales revenue both within and without a tax district, means net profit as defined in subsection (8) of this section, as apportioned under KRS 67.753; and
  - (15) "Taxable year" means the calendar year or fiscal year ending during the calendar year, upon the basis of which net income or gross receipts is computed.

**Signed by the Governor March 20, 2009.**

## CHAPTER 50

### (HB 181)

AN ACT relating to projects, making an appropriation therefor, and declaring an emergency.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. 2008 Kentucky Acts Chapter 191, Section 1, is repealed and reenacted to read as follows:

The following Infrastructure for Economic Development Fund for Coal-Producing Counties projects shall be funded from the \$75,000,000 Bond Pool authorization identified in Part II, A., 4., 004., of 2008 Regular Session HB 406 as amended by 2008 Regular Session HB 410 and 514:

<b>Fiscal Years</b>	<b>2008-09</b>	<b>2009-10</b>	
<b>Bell County</b>			
<b>001.</b>	Bell County Fiscal Court - IP Sewer and Water Infrastructure		
	Bond Funds	1,000,000	-0-
<b>002.</b>	City of Middlesboro - Noetown Sewer Rehabilitation/Binghamtown Ps Rehabilitation (SX21013148)		
	Bond Funds	450,000	-0-
<b>003.</b>	Pineville Utility Commission - Rehabilitation - Replacement and/or Extension of Waterlines		
	Bond Funds	900,000	-0-
<b>Boyd County</b>			
<b>001.</b>	Big Sandy Water District - Fire Hydrant - Purchase and Rehab in Big Sandy and East Fork District Area - Upgrade to Interconnect with City of Ashland		
	Bond Funds	200,000	-0-
<b>002.</b>	Boyd County Fiscal Court - Phase IV Sewer Infrastructure - Improvements - Marsh Hill Pump Station and Force Main Project and Other Sewer System		

	Upgrades		
	Bond Funds	250,000	-0-
<b>003.</b>	Boyd County Fiscal Court - Sewer Infrastructure - Improvements - Marsh Hill Pump Station and Force Main Project and Other Sewer System Upgrades		
	Bond Funds	750,000	-0-
<b>004.</b>	Boyd County Sanitation District II - Sewer System - Line Extension - Improvements		
	Bond Funds	150,000	-0-
<b>005.</b>	Boyd County Sanitation District II - Sewer System - Line Extension - Improvements		
	Bond Funds	350,000	-0-
<b>006.</b>	Cannonsburg Water District - Water Tank Upgrade/Refurbish and Other Waterline - System Improvements		
	Bond Funds	250,000	-0-
<b>Breathitt County</b>			
<b>001.</b>	Breathitt County Fiscal Court - Hwy 30 West Project		
	Bond Funds	750,000	-0-
<b>002.</b>	Breathitt County Water District - Hwy 15 South (Watts) Extension (WX21025004)		
	Bond Funds	1,600,000	-0-
<b>Carter County</b>			
<b>001.</b>	Carter County Fiscal Court - Rattlesnake Ridge - Water and Sewer Lines		
	Bond Funds	300,000	-0-
<b>002.</b>	City of Grayson - US 60 East to Damron Mayo Subdivision (SX21043005)		
	Bond Funds	550,000	-0-
<b>003.</b>	City of Olive Hill - Blueberry Ridge Road (SX21043010)		
	Bond Funds	450,000	-0-
<b>004.</b>	City of Olive Hill - Facility Plan Update and Feasibility Study to Serve Pleasant Valley (SX21043026)		
	Bond Funds	85,000	-0-
<b>005.</b>	City of Olive Hill - Line Extensions and Upgrades (WX21043025)		
	Bond Funds	415,000	-0-
<b>Clay County</b>			
<b>001.</b>	City of Manchester - Muddy Gap Sewer Extension		
	Bond Funds	125,000	-0-
<b>002.</b>	City of Manchester - Pennington Hill Tank (WX21051049)		
	Bond Funds	800,000	-0-
<b>003.</b>	City of Manchester - Sewer or Water Plant Expansion (WX21051542)		
	Bond Funds	500,000	-0-

<b>004.</b>	City of Manchester - Water Treatment Plant Expansion Project (WX21051542)		
	Bond Funds	1,000,000	-0-
<b>005.</b>	Clay County Fiscal Court - Countywide Waterline Extensions (WX21051541)		
	Bond Funds	250,000	-0-
<b>006.</b>	Clay County Fiscal Court - Gilberts Creek/Elisha Creek Waterline Extension (WX21051541)		
	Bond Funds	100,000	-0-
<b>Crittenden County</b>			
<b>001.</b>	City of Marion - Wastewater Extension Phase I (SX21055002)		
	Bond Funds	600,000	-0-
<b>002.</b>	City of Marion - Water and Sewer Repairs and Extensions		
	Bond Funds	500,000	-0-
<b>003.</b>	City of Marion - Water Distribution Upgrade 2 (WX21055003)		
	Bond Funds	450,000	-0-
<b>004.</b>	Crittenden-Livingston County Water District - Debt Retirement		
	Bond Funds	300,000	-0-
<b>Daviess County</b>			
<b>001.</b>	City of Whitesville - Edge Road Waterline Extension (WX21059029)		
	Bond Funds	12,000	-0-
<b>002.</b>	City of Whitesville - Sewer Rehabilitation (SX21059018)		
	Bond Funds	42,000	-0-
<b>003.</b>	City of Whitesville - Sewer System Upgrade		
	Bond Funds	225,000	-0-
<b>004.</b>	City of Whitesville - Treatment Plant Upgrade (SX21059008)		
	Bond Funds	32,000	-0-
<b>005.</b>	East Daviess County Water Association - Operations Center		
	Bond Funds	225,000	-0-
<b>006.</b>	Owensboro Municipal Utilities - Replace Undersized and Aging Water Mains		
	Bond Funds	225,000	-0-
<b>007.</b>	Regional Water Resource Agency - Subdivision Sewer Extensions		
	Bond Funds	151,000	-0-
<b>008.</b>	Southeast Daviess County Water District - Water Tank Construction Project		
	Bond Funds	225,000	-0-
<b>009.</b>	West Daviess County Water District - Water Tank Construction Project		
	Bond Funds	225,000	-0-
<b>010.</b>	West Daviess County Water District - West Louisville Tank Replacement (WX21059022)		
	Bond Funds	488,000	-0-

**Elliott County**

<b>001.</b>	Rattlesnake Ridge Water District - Phase VIII Waterline - Water System - Line Extensions - Upgrades and Other Additions - Enhancements and Upgrades		
	Bond Funds	500,000	-0-
<b>002.</b>	Sandy Hook Sewer District - Sewer System Upgrades - Line Extensions and Maintenance		
	Bond Funds	250,000	-0-
<b>003.</b>	Sandy Hook Water District - Waterline - Water System - Upgrades and Line Extensions - Including GPS Mapping Mandates and Other Capital Improvements		
	Bond Funds	600,000	-0-
<b>004.</b>	Sandy Hook Water District - Waterline - Water System Upgrades and Line Extensions - Including GPS Mapping Mandates and Other Capital Improvements		
	Bond Funds	500,000	-0-

**Floyd County**

<b>001.</b>	Floyd County Fiscal Court - Floyd County Fire Hydrants		
	Bond Funds	30,000	-0-
<b>002.</b>	Floyd County Fiscal Court - Floyd County Waterline Replacement - Harold to Little Mud		
	Bond Funds	30,000	-0-
<b>003.</b>	Floyd County Fiscal Court - Harold KY Area - Sewer Plant and Line Expansion		
	Bond Funds	1,000,000	-0-
<b>004.</b>	Floyd County Fiscal Court - Wheelwright Water Plant - Water Source - Water Line Extension		
	Bond Funds	290,000	-0-
<b>005.</b>	Floyd County Fiscal Court - Wheelwright Water Plant - Water Source and Waterline Extensions		
	Bond Funds	310,000	-0-
<b>006.</b>	Wheelwright Utility Commission - Water Treatment Plant Improvements (WX21071903)		
	Bond Funds	860,000	-0-

**Hancock County**

<b>001.</b>	City of Hawesville - Hawesville - Water and Sewer Improvements		
	Bond Funds	625,000	-0-
<b>002.</b>	City of Lewisport - Lewisport - Water and Sewer Improvements		
	Bond Funds	625,000	-0-
<b>003.</b>	Hancock County Fiscal Court - Gatewood Area System Improvements		
	Bond Funds	600,000	-0-

**Harlan County**

<b>001.</b>	Black Mountain Utility District - Baxter/Ross Point Sewer Phase II		
	Bond Funds	250,000	-0-

<b>002.</b>	Black Mountain Utility District - Wallins Waterline Extension/Expansion		
	Bond Funds	250,000	-0-
<b>003.</b>	Harlan County Fiscal Court - Black Mountain Water District - Holmes Mill - Waterline Extension		
	Bond Funds	1,150,000	-0-
<b>004.</b>	Harlan County Fiscal Court - Greenhill Water District - Woodward Water Project		
	Bond Funds	200,000	-0-
<b>005.</b>	Harlan County Fiscal Court - IP Water and Sewer Infrastructure		
	Bond Funds	1,000,000	-0-
<b>Henderson County</b>			
<b>001.</b>	City of Henderson - Improvement of Drainage and Flow of Waters in Canoe Creek in and Around City and County		
	Bond Funds	1,350,000	-0-
<b>002.</b>	Henderson County Fiscal Court - Water and Sewer Extensions or Repairs		
	Bond Funds	1,000,000	-0-
<b>Hopkins County</b>			
<b>001.</b>	City of Hanson - Sewer System Improvements Phase II (SX21107003)		
	Bond Funds	400,000	-0-
<b>002.</b>	City of Madisonville - South Main Sewer Interceptor Phase 1a and 1b (SX21107008)		
	Bond Funds	1,350,000	-0-
<b>003.</b>	Hopkins County Fiscal Court - Various Water and Sewer Projects		
	Bond Funds	600,000	-0-
<b>Jackson County</b>			
<b>001.</b>	City of McKee - Sewer Plant		
	Bond Funds	500,000	-0-
<b>002.</b>	Jackson County Fiscal Court - Various Waterlines		
	Bond Funds	500,000	-0-
<b>003.</b>	Jackson County Fiscal Court - Waterline - Hisel Road, Sturgeon Creek Road, Dry Branch Road, Terrells Creek Road, Zekes Point Road, Little Wild Dog Road, Gravel Lick Road, Hog Camp Road, Walkers Branch, Herd Springs, 89 North Toward McKee from Drip Rock, and 89 South to County Line		
	Bond Funds	850,000	-0-
<b>Johnson County</b>			
<b>001.</b>	City of Paintsville - Sewer Line Connections - Abandoned Package Plants		
	Bond Funds	250,000	-0-
<b>002.</b>	Paintsville Utility Commission - Burchett Hollow and Dogwood Fork North Road		
	Bond Funds	77,842	-0-
<b>003.</b>	Paintsville Utility Commission - Green Rock Fork, Greasy Branch Road, O. Ratliff Road, Asa Creek, Cantrells Fork, and Frozen Branch		
	Bond Funds	189,247	-0-
<b>004.</b>	Paintsville Utility Commission - KY 1092 Sparks Branch		

	Bond Funds	113,528	-0-
<b>005.</b>	Paintsville Utility Commission - Miscellaneous Short Line Connection		
	Bond Funds	191,383	-0-
<b>006.</b>	Paintsville Utility Commission - New Water Treatment Plant (WX21115001)		
	Bond Funds	750,000	-0-
<b>007.</b>	Paintsville Utility Commission - Oil Springs Hargis, James Bayes Road, Pigeon Creek Road, Conley Cemetery Road, and J. Webb Branch Road		
	Bond Funds	828,000	-0-
<b>Knott County</b>			
<b>001.</b>	Knott County Water and Sewer District - Various Waterline Extension Projects		
	Bond Funds	1,000,000	-0-
<b>002.</b>	Troublesome Creek Environmental Authority - Sewage Treatment Project - Ball Creek		
	Bond Funds	1,425,000	-0-
<b>Knox County</b>			
<b>001.</b>	City of Barbourville - Water Project		
	Bond Funds	400,000	-0-
<b>002.</b>	City of Barbourville - Water Pumping Project		
	Bond Funds	385,000	-0-
<b>003.</b>	City Utilities Commission of Corbin - KY 1232 Barbourville Road Sanitary Sewer Line Extension (SX21121509)		
	Bond Funds	700,000	-0-
<b>004.</b>	City Utilities Commission of Corbin - Sanitary Sewer Line Extension to Bradford Park (SX21121508)		
	Bond Funds	300,000	-0-
<b>005.</b>	Knox County Fiscal Court - Water Tank (WX21121533)		
	Bond Funds	100,000	-0-
<b>006.</b>	Knox County Utility Commission - Stinking Creek Waterlines		
	Bond Funds	375,000	-0-
<b>007.</b>	Knox County Utility Commission - Water Project		
	Bond Funds	575,000	-0-
<b>008.</b>	Knox Utility Commission - Fire Hydrant Replacement and Construction on Hwy 11		
	Bond Funds	15,000	-0-
<b>Laurel County</b>			
<b>001.</b>	City of London Utility Commission - Collection Sewer Extensions for 19 Unserved Areas Within The City of London (SX21125182)		
	Bond Funds	302,900	-0-
<b>002.</b>	East Laurel Water District - Wastewater Line Extension #1 (SX21125301)		
	Bond Funds	375,000	-0-
<b>003.</b>	Laurel County Fiscal Court - Lay New 6" Main Starting on Hammons Lane		

	into Sublimity Springs Subdivision		
	Bond Funds	125,000	-0-
<b>004.</b>	Laurel County Water District #2 - Water Storage Facility Improvement Project (WX21125555)		
	Bond Funds	100,000	-0-
<b>005.</b>	Wood Creek Water District - 20 Inch Waterline to West Laurel Water Association		
	Bond Funds	62,100	-0-
<b>006.</b>	Wood Creek Water District - System Improvement #8 (WX21125534)		
	Bond Funds	660,000	-0-
<b>007.</b>	Wood Creek Water District - Watershed Protection Project #1 (WX21125542)		
	Bond Funds	250,000	-0-
<b>Lawrence County</b>			
<b>001.</b>	Big Sandy Water District - Route 3 and Other Line Extensions and Improvements		
	Bond Funds	1,000,000	-0-
<b>002.</b>	Lawrence County Fiscal Court - Cynthia Chapel Sewer Project - Sewer Line Extensions and Sewer Line Additions - Sewer System Upgrades and Improvements		Other
	Bond Funds	600,000	-0-
<b>003.</b>	Lawrence County Fiscal Court - Sewer System - Sewer Line Extensions - Upgrades - Additions and Improvements		
	Bond Funds	250,000	-0-
<b>004.</b>	Rattlesnake Ridge Water District - Phase VIII - Water System - Line Extensions - Upgrades - Additions - Improvements and Other Enhancements		
	Bond Funds	500,000	-0-
<b>Lee County</b>			
<b>001.</b>	City of Beattyville - Sewer Project		
	Bond Funds	500,000	-0-
<b>002.</b>	City of Beattyville - Water and Sewage - Various Water and Sewer Lines		
	Bond Funds	1,350,000	-0-
<b>Leslie County</b>			
<b>001.</b>	City of Hyden - Wastewater Project Hwy 80 and 421		
	Bond Funds	250,000	-0-
<b>002.</b>	Hyden/Leslie County Water District - Grassy Waterline Extensions (WX21131008)		
	Bond Funds	500,000	-0-
<b>003.</b>	Hyden/Leslie County Water District - Hell for Certain Water Project (WX21131007)		
	Bond Funds	750,000	-0-

<b>004.</b>	Hyden/Leslie County Water District - Water System Improvements Phase II (WX21131111)		
	Bond Funds	750,000	-0-
<b>005.</b>	Leslie County Fiscal Court - Waterline - McKintosh		
	Bond Funds	100,000	-0-
<b>Letcher County</b>			
<b>001.</b>	City of Whitesburg - Wastewater Plant Project (SX21133007)		
	Bond Funds	250,000	-0-
<b>002.</b>	Letcher County Fiscal Court - Cane Branch/McPeaks Branch		
	Bond Funds	400,000	-0-
<b>003.</b>	Letcher County Fiscal Court - Red Star/Hallie Water Project		
	Bond Funds	850,000	-0-
<b>004.</b>	Letcher County Fiscal Court - Sewer Extension - Burdine #2 Bottom		
	Bond Funds	100,000	-0-
<b>005.</b>	Letcher County Water and Sewer District - Red Star/Ulvah/Hallie Waterline Extensions (WX21133013)		
	Bond Funds	750,000	-0-
<b>Magoffin County</b>			
<b>001.</b>	City of Salyersville - Improvement Service Project (WX21153515)		
	Bond Funds	350,000	-0-
<b>002.</b>	Magoffin County Water District - Magoffin Water/Paintsville Utilities Emergency Water Connect (WX21153022)		
	Bond Funds	400,000	-0-
<b>003.</b>	Magoffin County Water District - Tip Top Pump Station and Waterline Extension		
	Bond Funds	155,000	-0-
<b>004.</b>	Magoffin County Water District - Water Project - 18A - 18B - 18C		
	Bond Funds	1,000,000	-0-
<b>Martin County</b>			
<b>001.</b>	Martin County Fiscal Court - Martin County Water		
	Bond Funds	1,350,000	-0-
<b>002.</b>	Martin County Fiscal Court - Warfield Sewer		
	Bond Funds	1,000,000	-0-
<b>Menifee County</b>			
<b>001.</b>	Cave Run Water District - Various Water and Sewer Projects		
	Bond Funds	1,037,390	-0-
<b>002.</b>	City of Frenchburg - Indian Creek and Water Tank Rehabilitation Project		
	Bond Funds	75,000	-0-
<b>003.</b>	City of Frenchburg - Indian Creek and Water Tank Rehabilitation Project (WX21165002)		
	Bond Funds	75,000	-0-

<b>004.</b>	Menifee County Fiscal Court - Payment of Installation of Waterlines - Peter Trace and Cornwell Branch		
	Bond Funds	226,360	-0-
<b>005.</b>	Menifee County Gateway Area Development District - Regional Water Interconnect - Match/Debt Retirement		
	Bond Funds	11,250	-0-
<b>Morgan County</b>			
<b>001.</b>	City of West Liberty - Water and Sewer Expansion		
	Bond Funds	250,000	-0-
<b>002.</b>	Morgan County Fiscal Court - Various Water and Sewer Projects		
	Bond Funds	1,327,500	-0-
<b>003.</b>	Morgan County Gateway Area Development District - Regional Water Interconnect - Match/Debt Retirement		
	Bond Funds	22,500	-0-
<b>Muhlenberg County</b>			
<b>001.</b>	City of Central City - <del>Waste</del> Water Treatment Plant Expansion <del>((SX21177010))</del>		
	Bond Funds	1,550,000	-0-
<b>002.</b>	Muhlenberg County Fiscal Court - Various Water and Sewer Projects		
	Bond Funds	700,000	-0-
<b>003.</b>	Muhlenberg County Water District #1 - Telemetry System Replacement		
	Bond Funds	100,000	-0-
<b>Ohio County</b>			
<b>001.</b>	Ohio County Fiscal Court - City of Centertown - Water Project		
	Bond Funds	500,000	-0-
<b>002.</b>	Ohio County Fiscal Court - City of Hartford - Sewer Intrusion Project		
	Bond Funds	625,000	-0-
<b>003.</b>	Ohio County Fiscal Court - Narrows - Waterline Extension		
	Bond Funds	125,000	-0-
<b>004.</b>	Ohio County Fiscal Court - Ohio County Regional Water District - Treatment Plant Connections		and Line
	Bond Funds	550,000	-0-
<b>005.</b>	Ohio County Fiscal Court - Ohio County Regional Water District - New Wastewater Plant and Line Connection		
	Bond Funds	200,000	-0-
<b>006.</b>	Ohio County Fiscal Court - Sewer Project Across North Side of Rough River		
	Bond Funds	100,000	-0-
<b>Owsley County</b>			
<b>001.</b>	City of Booneville - Water and Sewer Expansion		
	Bond Funds	250,000	-0-
<b>002.</b>	Owsley County Water District - Waterline Upgrades		

	Bond Funds	579,000	-0-
<b>003.</b>	Owsley County Water District - Waterlines - Farra Drive - Southeast Owsley County Near Perry		
	Bond Funds	821,000	-0-
<b>Perry County</b>			
<b>001.</b>	Perry County Fiscal Court - North Perry Water - Various Projects		
	Bond Funds	150,000	-0-
<b>002.</b>	Perry County Fiscal Court - North Perry Water Project		
	Bond Funds	350,000	-0-
<b>003.</b>	Perry County Fiscal Court - South Perry Water - Various Projects		
	Bond Funds	1,350,000	-0-
<b>004.</b>	Perry County Fiscal Court - South Perry Water Project		
	Bond Funds	1,000,000	-0-
<b>Pike County</b>			
<b>001.</b>	City of Pikeville - Telemetry Equipment		
	Bond Funds	100,000	-0-
<b>002.</b>	Mountain Water District - Long Fork Road - Virgie - Indian Creek Area - Sewer Project		
	Bond Funds	1,400,000	-0-
<b>003.</b>	Mountain Water District - Short Line Water Extensions		
	Bond Funds	1,300,000	-0-
<b>004.</b>	Mountain Water District - Telemetry Equipment		
	Bond Funds	200,000	-0-
<b>005.</b>	Mountain Water District - Waterline Extensions		
	Bond Funds	150,000	-0-
<b>Rockcastle County</b>			
<b>001.</b>	City of Brodhead - Replacing and Upgrading Waterlines		
	Bond Funds	225,000	-0-
<b>002.</b>	City of Livingston - Replacing, Upgrading, and Extension of Waterlines		
	Bond Funds	225,000	-0-
<b>003.</b>	City of Mount Vernon - Sewer Line Extension - Sewer Plant		
	Bond Funds	913,700	-0-
<b>004.</b>	Rockcastle County Fiscal Court - Eastern Rockcastle Water Association - KY Hwy 1955 Water Storage Tank		
	Bond Funds	136,300	-0-
<b>005.</b>	Rockcastle County Fiscal Court - Eastern Rockcastle Water Association - Waterline Improvements		
	Bond Funds	200,000	-0-
<b>006.</b>	Rockcastle County Fiscal Court - Western Rockcastle Water Association - Waterline Improvements - Upgrading Waterlines and Meter Reading Equipment		

	Bond Funds	200,000	-0-
<b>Union County</b>			
<b>001.</b>	City of Morganfield - Various Water and Sewer Lines		
	Bond Funds	300,000	-0-
<b>002.</b>	City of Sturgis - Various Water and Sewer Lines		
	Bond Funds	300,000	-0-
<b>003.</b>	City of Uniontown - Various Water and Sewer Lines		
	Bond Funds	300,000	-0-
<b>004.</b>	City of Waverly - Various Water and Sewer Lines		
	Bond Funds	100,000	-0-
<b>005.</b>	Union County Fiscal Court - Various Water and Sewer Lines		
	Bond Funds	350,000	-0-
<b>006.</b>	Union County Fiscal Court - Water and Sewer Extensions or Repairs		
	Bond Funds	1,000,000	-0-
<b>Webster County</b>			
<b>001.</b>	City of Clay - Waterline Repair - Upgrades - Expansions		
	Bond Funds	250,000	-0-
<b>002.</b>	City of Providence - Sewer Line Repair - Improvements - Expansion		
	Bond Funds	350,000	-0-
<b>003.</b>	City of Sebree - Water Tank - Repairs - Improvements		
	Bond Funds	360,000	-0-
<b>004.</b>	City of Slaughters - Waterline Repair - Upgrades - Expansion		
	Bond Funds	130,000	-0-
<b>005.</b>	Webster County Fiscal Court - Dixon Sewer Upgrades - Rehab Pump Stations		
	Bond Funds	230,000	-0-
<b>006.</b>	Webster County Fiscal Court - Sewer Rehab Equipment - Camera and Related Equipment Stored by City of Sebree		
	Bond Funds	30,000	-0-
<b>007.</b>	Webster County Fiscal Court - Water and Sewer Extensions or Repairs		
	Bond Funds	1,000,000	-0-
<b>Whitley County</b>			
<b>001.</b>	Whitley County Fiscal Court - Golddust Lane Waterline		
	Bond Funds	50,000	-0-
<b>002.</b>	Whitley County Fiscal Court - Mud Creek Road Waterline		
	Bond Funds	152,000	-0-
<b>003.</b>	Whitley County Fiscal Court - Sewer Project		
	Bond Funds	1,065,000	-0-
<b>004.</b>	Whitley County Water District - Meadow Creek - Tackett Creek Expansion Project (WX21235432)		
	Bond Funds	1,148,000	-0-

**Wolfe County**

<b>001.</b>	City of Campton - Various Water and Sewer Projects		
	Bond Funds	500,000	-0-
<b>002.</b>	City of Campton - Water Plant - Various Water and Sewer Projects		
	Bond Funds	675,000	-0-
<b>003.</b>	Wolfe County Fiscal Court - Various Water and Sewer Projects		
	Bond Funds	675,000	-0-

➔Section 2. 2008 Kentucky Acts Chapter 191, Section 2, is repealed and reenacted to read as follows:

The following Infrastructure for Economic Development Fund for Non-Coal Producing Counties projects shall be funded from the \$150,000,000 Bond Pool authorization identified in Part II, A., 4., 005., of 2008 Regular Session HB 406 as amended by 2008 Regular Session HB 410 and 514:

<b>Fiscal Years</b>	<b>2008-09</b>	<b>2009-10</b>
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**Adair County**

<b>001.</b>	Adair County Water District - Columbia Bypass Transmission Main and Storage Tank (WX21001016)		
	Bond Funds	1,225,000	-0-
<b>002.</b>	City of Columbia - Parkview Subdivision Sewer Extension (SX21001012)		
	Bond Funds	273,000	-0-

**Allen County**

<b>001.</b>	Allen County Fiscal Court - Various Waterline Extensions		
	Bond Funds	72,000	-0-
<b>002.</b>	City of Scottsville - Allen County Library Water Improvement Project		
	Bond Funds	7,500	-0-
<b>003.</b>	City of Scottsville - Bluegrass Drive Sewer		
	Bond Funds	145,000	-0-
<b>004.</b>	City of Scottsville - Computer Mapping and Scanning (SX21003025)		
	Bond Funds	25,000	-0-
<b>005.</b>	City of Scottsville - Sewer Lines to Future Industrial Property		
	Bond Funds	100,000	-0-
<b>006.</b>	City of Scottsville - Sewer Plant Improvements (SX21003027)		
	Bond Funds	250,000	-0-
<b>007.</b>	City of Scottsville - Spring Valley Sewer Extension Project (SX21003026)		
	Bond Funds	250,000	-0-
<b>008.</b>	City of Scottsville - Wastewater Treatment Plant Improvements (SX21003027)		
	Bond Funds	500,000	-0-

**Anderson County**

<b>001.</b>	South Anderson Water District - Phase VII Expansions (WX21005004)		
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	Bond Funds	1,800,000	-0-
<b>Ballard County</b>			
<b>001.</b>	City of Barlow - New Sewage Treatment Plant and Collection System Rehabilitation (SX21007011)		
	Bond Funds	450,000	-0-
<b>002.</b>	City of Kevil - Sewer Repair to Stop III (SX21007004)		
	Bond Funds	450,000	-0-
<b>003.</b>	City of La Center - Water System Improvements (WX21007017)		
	Bond Funds	300,000	-0-
<b>Barren County</b>			
<b>001.</b>	Barren County Fiscal Court - Various Water and Sewer Projects		
	Bond Funds	540,000	-0-
<b>002.</b>	Caveland Environmental Authority - Duke Street (WX21009024)		
	Bond Funds	256,000	-0-
<b>003.</b>	Caveland Environmental Authority - Hwy 90 East - Trailer Park		
	Bond Funds	460,000	-0-
<b>004.</b>	Glasgow Water Company - Beaver Creek Water Draft Improvements (WX21009027)		
	Bond Funds	240,000	-0-
<b>005.</b>	Glasgow Water Company - Sanitary Sewer for Hwy 90 West - Barren County Board		of Education
	(SX21009036)		
	Bond Funds	500,000	-0-
<b>006.</b>	Glasgow Water Company - Wastewater Improvement - Austin Tracy School (SX21009023)		
	Bond Funds	350,000	-0-
<b>007.</b>	Glasgow Water Company - Wastewater Treatment Plant Improvement (SX21009038)		
	Bond Funds	600,000	-0-
<b>008.</b>	Green River Water District - Improvements of Waterlines in Barren County		
	Bond Funds	210,000	-0-
<b>Bath County</b>			
<b>001.</b>	Bath County Water District - Interconnect Project (WX21011017)		
	Bond Funds	206,250	-0-
<b>002.</b>	City of Owingsville - US 60 East - Wyoming Road Elementary School Project		
	Bond Funds	350,000	-0-
<b>003.</b>	City of Owingsville - US 60 East - Wyoming Road A6 Extension Project (SX21011009)		
	Bond Funds	450,000	-0-
<b>004.</b>	Gateway Area Development District - Regional Water Interconnect -		

	Match/Debt Retirement		
	Bond Funds	18,750	-0-
<b>005.</b>	Sharpsburg Water District - Water Sales Machine Project (WX21011023)		
	Bond Funds	5,000	-0-
<b>006.</b>	Sharpsburg Water District - Water Tank Project (WX21011022)		
	Bond Funds	720,000	-0-
<b>Boone County</b>			
<b>001.</b>	Boone County Fiscal Court - Big Bone Church Road Water Extension - Stetter Road		
	Bond Funds	605,000	-0-
<b>002.</b>	Boone County Fiscal Court - KY 338 - Big Bone Church Road		
	Bond Funds	400,000	-0-
<b>003.</b>	Boone County Fiscal Court - Merrell Road Waterline Extension		
	Bond Funds	150,000	-0-
<b>004.</b>	Boone County Fiscal Court - Petersburg Rural Water Project (WX21015401)		
	Bond Funds	1,200,000	-0-
<b>005.</b>	Boone County Fiscal Court - Williams Road - Merrell Road Phase II		
	Bond Funds	350,000	-0-
<b>006.</b>	Boone County Fiscal Court - Williams Road - Merrell Road Phase III		
	Bond Funds	350,000	-0-
<b>007.</b>	Boone County Fiscal Court - Williams Road to Merrell Road Waterline Extension		
	Bond Funds	150,000	-0-
<b>Bourbon County</b>			
<b>001.</b>	Bourbon County Fiscal Court - City of Millersburg - Various Waterlines		
	Bond Funds	25,000	-0-
<b>002.</b>	Bourbon County Fiscal Court - City of Paris - Centerville Sewer Project (SX21017009)		
	Bond Funds	425,000	-0-
<b>003.</b>	Bourbon County Fiscal Court - Paris and Bourbon County Industrial Park Wastewater (SX21017003)		Expansion
	Bond Funds	485,000	-0-
<b>004.</b>	City of North Middletown - North Middletown Sewer System (SX21017012)		
	Bond Funds	105,000	-0-
<b>005.</b>	City of Paris - Bourbon County Industrial Park Water Expansion (WX21017006)		
	Bond Funds	245,000	-0-
<b>006.</b>	City of Paris - Bourbon Hills Sanitary Sewer Collection Project (SX21017006)		

	Bond Funds	252,900	-0-
<b>007.</b>	City of Paris - Bourbon Hills Sanitary Sewer Collection Project Phase II (SX21017011)		
	Bond Funds	147,900	-0-
<b>008.</b>	City of Paris - US 68 Bypass Water Transmission Main Extension (WX21017007)		
	Bond Funds	220,000	-0-
<b>Boyle County</b>			
<b>001.</b>	City of Danville - Spear's Creek Pump Sanitary Lagoon Construction (SX21021010)		
	Bond Funds	450,000	-0-
<b>002.</b>	City of Danville - Spear's Creek Pump Station (SX21021010)		
	Bond Funds	550,000	-0-
<b>003.</b>	City of Danville - Various Water or Sewer Projects		
	Bond Funds	500,000	-0-
<b>Bracken County</b>			
<b>001.</b>	Bracken County Water District - Phase I County Cleanup (WX21023027)		
	Bond Funds	1,000,000	-0-
<b>002.</b>	Bracken County Water District - Phase II County Cleanup (WX21023028)		
	Bond Funds	250,000	-0-
<b>Breckinridge County</b>			
<b>001.</b>	Breckinridge County Fiscal Court - Waterline Extensions		
	Bond Funds	700,000	-0-
<b>002.</b>	City of Cloverport - Water and Sewer Extensions and Improvements		
	Bond Funds	100,000	-0-
<b>003.</b>	City of Hardinsburg - McQuady Phase III Waterline Extensions (WX21027017)		
	Bond Funds	450,000	-0-
<b>004.</b>	City of Hardinsburg - Water and Sewer Extensions and Improvements		
	Bond Funds	100,000	-0-
<b>005.</b>	City of Irvington - Water and Sewer Extensions and Improvements		
	Bond Funds	100,000	-0-
<b>006.</b>	Ohio County Water District - Line Extension (Priority Two)		
	Bond Funds	250,000	-0-
<b>Bullitt County</b>			
<b>001.</b>	Bullitt County Fiscal Court - Barrelton Hill Road (WX21029004)		
	Bond Funds	60,000	-0-
<b>002.</b>	Bullitt County Fiscal Court - Booster Pump Station for Weavers Run (WX21029018)		

	Bond Funds	60,000	-0-
<b>003.</b>	Bullitt County Fiscal Court - Fisher Road (WX21029056)		
	Bond Funds	30,000	-0-
<b>004.</b>	Bullitt County Fiscal Court - Samuels Court (WX21029170)		
	Bond Funds	30,000	-0-
<b>005.</b>	Bullitt County Fiscal Court - Sewer Line Repair		
	Bond Funds	150,000	-0-
<b>006.</b>	Bullitt County Fiscal Court - Skyview Road (WX21029176)		
	Bond Funds	60,000	-0-
<b>007.</b>	Bullitt County Fiscal Court - Water and Sewer Extensions and Improvements		
	Bond Funds	100,000	-0-
<b>008.</b>	Bullitt County Water District - Various Water Project Installations		
	Bond Funds	700,000	-0-
<b>009.</b>	City of Lebanon Junction - Water and Sewer Extensions and Improvements		
	Bond Funds	100,000	-0-
<b>010.</b>	City of Mount Washington - Sewer Work		
	Bond Funds	1,000,000	-0-
<b>011.</b>	City of Shepherdsville - Installation on Sewers		
	Bond Funds	1,000,000	-0-
<b>Butler County</b>			
<b>001.</b>	Butler County Fiscal Court - Hwy 1683 Fire Protection (WX21031038)		
	Bond Funds	320,000	-0-
<b>002.</b>	Butler County Fiscal Court - Logansport Tank Replacement (WX21031030)		
	Bond Funds	300,000	-0-
<b>003.</b>	Butler County Fiscal Court - Small Diameter Waterline Extension and Replacement (WX21031035)		
	Bond Funds	450,000	-0-
<b>004.</b>	Butler County Fiscal Court - Water Treatment Plant Emergency Backup Power System (WX21031033)		
	Bond Funds	430,000	-0-
<b>005.</b>	City of Morgantown - Water Tank Replacement or Improvements		
	Bond Funds	200,000	-0-
<b>Caldwell County</b>			
<b>001.</b>	Caldwell County Fiscal Court - Water and Sewer Repairs and Line Extensions		
	Bond Funds	300,000	-0-
<b>002.</b>	Caldwell County Water District - Waterline Extensions		
	Bond Funds	500,000	-0-
<b>003.</b>	Princeton Water and Wastewater Commission - Automated Meter System		

	Bond Funds	600,000	-0-
<b>004.</b>	Princeton Water and Wastewater Commission - Inflow and Infiltration Study of Sanitary Sewer System		
	Bond Funds	350,000	-0-
<b>Calloway County</b>			
<b>001.</b>	Bendefield Water Association - Bendefield Consumers Interconnect (WX21035015)		
	Bond Funds	155,000	-0-
<b>002.</b>	Calloway County Fiscal Court - Center Ridge #1 - ABS Pipeline Replacement (WX21035021)		
	Bond Funds	290,000	-0-
<b>003.</b>	Center Ridge Water District #4 - Line Rehabilitation (WX21035016)		
	Bond Funds	190,000	-0-
<b>004.</b>	City of Hazel - Hazel Overflow Reduction		
	Bond Funds	60,000	-0-
<b>005.</b>	City of Murray - Murray Southwest Water Tank (WX21035017)		
	Bond Funds	1,011,000	-0-
<b>006.</b>	City of Murray - Murray Waterline Extension to Serve Industrial Park (WX21035010)		
	Bond Funds	280,000	-0-
<b>007.</b>	City of Murray - Poor Farm Road Waterline (WX21035010)		
	Bond Funds	100,000	-0-
<b>008.</b>	City of Murray - US 641 - Hwy 80 Industrial Park Sewer Project (SX21035009)		
	Bond Funds	250,000	-0-
<b>009.</b>	City of Murray - US 641 - Hwy 80 Sewer Extension (SX21035009)		
	Bond Funds	100,000	-0-
<b>010.</b>	Dexter-Almo Heights Water District - Brinn Road Interconnect (WX21035025)		
	Bond Funds	144,000	-0-
<b>011.</b>	Murray Water District #2 - Hicks Cemetery and Cherry Corner Road Extension (WX21035020)		
	Bond Funds	220,000	-0-
<b>Campbell County</b>			
<b>001.</b>	City of Bellevue - Storm Water Infrastructure		
	Bond Funds	200,000	-0-
<b>002.</b>	City of Dayton - Water and Sewer		
	Bond Funds	200,000	-0-
<b>003.</b>	City of Newport - Miscellaneous Storm Water Infrastructure		
	Bond Funds	600,000	-0-

<b>004.</b>	City of Southgate - Sewer and Storm Water Infrastructure		
	Bond Funds	100,000	-0-
<b>005.</b>	City of Wilder - St. Johns Sewer Lines		
	Bond Funds	100,000	-0-
<b>006.</b>	Northern Kentucky Water District - 2006 Campbell County		
	Unserved/Underserved System Improvements - Koenig (WX21037203)		
	Bond Funds	1,000,000	-0-
<b>007.</b>	Northern Kentucky Water District - Campbell County System Improvements (WX21037203)		
	Bond Funds	1,200,000	-0-
<b>008.</b>	Northern Kentucky Water District - Campbell County Unserved/Underserved System Improvements (WX21037203)		
	Bond Funds	750,000	-0-

**Carlisle County**

<b>001.</b>	Carlisle County Sanitation District #1 - Wastewater Treatment Plant Surge Basin (SX21039001)		
	Bond Funds	600,000	-0-
<b>002.</b>	City of Arlington - AC Main Replacement (WX21039016)		
	Bond Funds	350,000	-0-
<b>003.</b>	City of Arlington - Emergency Sewer Repair		
	Bond Funds	60,000	-0-
<b>004.</b>	City of Bardwell - Hillcrest Subdivision Extension (SX21039007)		
	Bond Funds	85,000	-0-
<b>005.</b>	City of Bardwell - Water Tank and District System Project (WX21039015)		
	Bond Funds	300,000	-0-
<b>006.</b>	Cunningham Water District - Line Replacement Phase I (WX21039023)		
	Bond Funds	155,000	-0-

**Carroll County**

<b>001.</b>	Carroll County Water District - 2007 Capacity Upgrade (WX21041303)		
	Bond Funds	350,000	-0-
<b>002.</b>	Carroll County Water District - Capacity Upgrade 2007 (WX21041303)		
	Bond Funds	200,000	-0-
<b>003.</b>	City of Carrollton - Regional Wastewater Treatment Plant (SX21041200)		
	Bond Funds	350,000	-0-

**Casey County**

<b>001.</b>	Casey County Water District - Various Water Projects		
	Bond Funds	375,000	-0-
<b>002.</b>	City of Liberty - Water Plant Expansion and Force Main (WX21045004)		
	Bond Funds	400,000	-0-
<b>003.</b>	East Casey County Water District - Campbellsville Interconnection and Pump Station		

	Bond Funds	120,000	-0-
<b>004.</b>	East Casey County Water District - System Improvements #1		
	Bond Funds	980,000	-0-
<b>Christian County</b>			
<b>001.</b>	Christian County Fiscal Court - HWEA Butler Road - Sewer Extension (SX21047016)		
	Bond Funds	300,000	-0-
<b>002.</b>	Christian County Fiscal Court - HWEA Butler Road - Sewer Extension (SX21047016)		
	Bond Funds	100,000	-0-
<b>003.</b>	Christian County Fiscal Court - HWEA Russellville Road - Sewer Extension (SX21047018)		
	Bond Funds	200,000	-0-
<b>004.</b>	Christian County Fiscal Court - HWEA Russellville Road - Sewer Extension (SX21047018)		
	Bond Funds	350,000	-0-
<b>005.</b>	Christian County Water District - Various Water Projects		
	Bond Funds	800,000	-0-
<b>006.</b>	City of Oak Grove - Construct Interconnecting Water Transmission Line		
	Bond Funds	300,000	-0-
<b>007.</b>	Hopkinsville Water Environment Authority - Moss Water Treatment Plant Upgrade and Expansion (WX21047028)		
	Bond Funds	1,000,000	-0-
<b>008.</b>	Hopkinsville Water Environment Authority - US 41A Water Main Improvement and Interconnect Project (WX21047013)		
	Bond Funds	350,000	-0-
<b>Clark County</b>			
<b>001.</b>	City of Winchester - Various Water/Sewer Projects		
	Bond Funds	900,000	-0-
<b>002.</b>	Clark County Fiscal Court - East Clark Water District Schoolsville Road, Mina Station, and Stewarts Mill (WX21049021)		
	Bond Funds	525,000	-0-
<b>003.</b>	Clark County Fiscal Court - Water and Sewer Project		
	Bond Funds	925,000	-0-
<b>004.</b>	Winchester Municipal Utilities - Colby Hills Sanitary Sewer Improvements (SX21049019)		
	Bond Funds	450,000	-0-
<b>Clinton County</b>			
<b>001.</b>	City of Albany - Duvall Valley Water System Improvements (WX21053006)		
	Bond Funds	250,000	-0-
<b>002.</b>	City of Albany - Waterline Extensions		
	Bond Funds	350,000	-0-

<b>003.</b>	City of Albany - Waterline Extensions		
	Bond Funds	600,000	-0-
<b>Cumberland County</b>			
<b>001.</b>	City of Burkesville - Water Treatment Plant Project		
	Bond Funds	1,150,000	-0-
<b>002.</b>	Cumberland County Fiscal Court - Waterline Expansion		
	Bond Funds	110,000	-0-
<b>Edmonson County</b>			
<b>001.</b>	Edmonson County Water District - Water Service to New Customers (WX21061025)		
	Bond Funds	700,000	-0-
<b>002.</b>	Edmonson County Water\Sewer District - Phase II Collection System (SX21061005)		
	Bond Funds	750,000	-0-
<b>Estill County</b>			
<b>001.</b>	City of Irvine - Estill County Regional Wastewater System (SX21065005)		
	Bond Funds	900,000	-0-
<b>Fayette County</b>			
<b>001.</b>	Lexington-Fayette Urban-County Government - Expansion Area 2a Class A Pump Station and Trunk Sewer (SX21067006)		
	Bond Funds	3,100,000	-0-
<b>002.</b>	Lexington-Fayette Urban-County Government - Leesway Neighborhood Underserved Areas		
	Bond Funds	600,000	-0-
<b>Fleming County</b>			
<b>001.</b>	City of Flemingsburg - Fox Spring Avenue - Waterline Replacement (WX21069024)		
	Bond Funds	200,000	-0-
<b>002.</b>	City of Flemingsburg - Water Upgrades (WX21069016)		
	Bond Funds	450,000	-0-
<b>003.</b>	Fleming County Water Association - Loops (WX21069012)		
	Bond Funds	200,000	-0-
<b>004.</b>	Fleming County Water Association - Loops New Waterlines (WX21069012)		
	Bond Funds	300,000	-0-
<b>005.</b>	Fleming County Water Association - Waterline Upgrade - KY 111 Near Hillsboro (WX21069020)		
	Bond Funds	350,000	-0-
<b>006.</b>	Western Fleming County Water District - Raw Water Pump Station Upgrade (WX21069011)		

	Bond Funds	150,000	-0-
<b>Franklin County</b>			
<b>001.</b>	City of Frankfort - Frankfort Sewer Department - Holmes Street - Contract III A-2 (SX21073017)		
	Bond Funds	733,000	-0-
<b>002.</b>	Farmdale Sanitation District - New .75 Million Gallons A Day Wastewater Treatment Plant (SX21073029)		
	Bond Funds	550,000	-0-
<b>003.</b>	Farmdale Water District - Water Tank (WX21073010)		
	Bond Funds	992,000	-0-
<b>004.</b>	Frankfort Plant Board - Bain Moore Hill - Red Bridge Waterline Extension Phase II (WX21073009)		
	Bond Funds	100,000	-0-
<b>005.</b>	Frankfort Plant Board - Peaks Mill Road Second Feed Project (WX21073007)		
	Bond Funds	225,000	-0-
<b>006.</b>	Peaks Mill Water District - Peaks Mill US 127 Loop Water Project		
	Bond Funds	550,000	-0-
<b>Fulton County</b>			
<b>001.</b>	City of Fulton - Municipal Water System - Line Replacement (WX21075007)		
	Bond Funds	245,000	-0-
<b>002.</b>	City of Hickman - Davis Park Project (WX21075011)		
	Bond Funds	250,000	-0-
<b>003.</b>	City of Hickman - Sewer Rehabilitation (SX21075007)		
	Bond Funds	500,000	-0-
<b>004.</b>	City of Hickman - Water Treatment Plant Rehabilitation (WX21075005)		
	Bond Funds	5,000	-0-
<b>Gallatin County</b>			
<b>001.</b>	City of Glencoe - Sewer Line Extension I-71 Exit		
	Bond Funds	200,000	-0-
<b>002.</b>	City of Warsaw - Sewer Line Extension Scenic View Subdivision		
	Bond Funds	500,000	-0-
<b>Garrard County</b>			
<b>001.</b>	City of Berea - Berea Water and Sewer Line Improvements		
	Bond Funds	85,000	-0-
<b>002.</b>	City of Lancaster - Sewer Line		
	Bond Funds	506,750	-0-
<b>003.</b>	City of Lancaster - Sewer Line Extension - Glenmore Estates (SX21079010)		
	Bond Funds	450,000	-0-
<b>004.</b>	City of Lancaster - Utility Security Improvements Part B		
	Bond Funds	85,000	-0-
<b>005.</b>	Garrard County Water Association - Extension 12		

	Bond Funds	85,000	-0-
<b>006.</b>	Garrard County Water Association - Waterline Service		
	Bond Funds	129,000	-0-
<b>007.</b>	Kirksville Water Association - Hwy 1295 Waterline Extension - Garrard County		
	Bond Funds	139,000	-0-
<b>008.</b>	Kirksville Water Association - Waterline		
	Bond Funds	189,500	-0-
<b>Grant County</b>			
<b>001.</b>	City of Corinth - Marathon Drive Sewer Line Extension (SX21081901)		
	Bond Funds	500,000	-0-
<b>002.</b>	Grant County Fiscal Court - Waterline Extensions to Two Unserved Areas		
	Bond Funds	50,000	-0-
<b>003.</b>	Grant County Sanitary Sewer District - Grant County Sewer Extension Phase I (SX21081303)		
	Bond Funds	250,000	-0-
<b>004.</b>	Grant County Sanitary Sewer District - Grant County Sewer Extension Phase I (SX21081303)		
	Bond Funds	400,000	-0-
<b>Graves County</b>			
<b>001.</b>	City of Mayfield - Mayfield/Graves County Regional Water - 1,000,000 Gallon Tank (WX21083044)		
	Bond Funds	1,050,000	-0-
<b>002.</b>	City of Wingo - Complete Water Treatment Plant Improvements		
	Bond Funds	200,000	-0-
<b>003.</b>	Graves County Fiscal Court - Bendefield Water Association Consumer Merger		
	Bond Funds	55,000	-0-
<b>004.</b>	Graves County Fiscal Court - Flyover Graves County/Mayfield Aerial Photo		
	Bond Funds	75,000	-0-
<b>005.</b>	Graves County Fiscal Court - Holifield Heights - Replace Treatment Facility (SX21083026)		
	Bond Funds	75,000	-0-
<b>006.</b>	Graves County Fiscal Court - Mayfield Interconnect - Hardman and Mayfield Electric Water System (WX21083010)		
	Bond Funds	400,000	-0-
<b>007.</b>	Hickory Water District - Graves County Fiscal Court - Extend Line to Start at Hwy 1241 and End at Hwy 849		
	Bond Funds	350,000	-0-
<b>008.</b>	Symsonia Water District - Graves County Fiscal Court - Storage Tank, Wells, and Filler House		
	Bond Funds	595,000	-0-

**Grayson County**

<b>001.</b>	City of Leitchfield - Grayson County High School Area Sewers/Maple Leaf Estates (SX21085005)		
	Bond Funds	750,000	-0-
<b>002.</b>	City of Leitchfield - Raw Water Intake (WX21085021)		
	Bond Funds	200,000	-0-
<b>003.</b>	Grayson County Water District - Project 17 Line Extensions (WX21085019)		
	Bond Funds	740,000	-0-

**Green County**

<b>001.</b>	Green County Fiscal Court - Green - Taylor Water District Project		
	Bond Funds	175,000	-0-
<b>002.</b>	Green County Fiscal Court - Summersville Sewer System Upgrades		
	Bond Funds	240,000	-0-
<b>003.</b>	Green County Fiscal Court - Taylor Water District Project		
	Bond Funds	300,000	-0-
<b>004.</b>	Green County Sanitation District #1 - Green County/Summersville Sewer System Improvements, Upgrade, and Expansion (SX21087002)		
	Bond Funds	400,000	-0-

**Greenup County**

<b>001.</b>	Cannonsburg Water District - Greenup County Waterline Extensions		
	Bond Funds	150,000	-0-
<b>002.</b>	City of Bellefonte - Storm/Sanitary Sewer		
	Bond Funds	81,000	-0-
<b>003.</b>	City of Flatwoods - 500,000 Gallon Water Tank		
	Bond Funds	300,000	-0-
<b>004.</b>	City of Flatwoods - Replace Pump Stations		
	Bond Funds	100,000	-0-
<b>005.</b>	City of Grayson - Expansion of Water or Sewer into Greenup County		
	Bond Funds	50,000	-0-
<b>006.</b>	City of Greenup - Interconnects of Water System With Cannonsburg Water District Lines		
	Bond Funds	50,000	-0-
<b>007.</b>	City of Greenup - Water Sewer Upgrades or Equipment		
	Bond Funds	200,000	-0-
<b>008.</b>	City of Raceland - Brown Street Collapsed Sewer Repair (SX21089058)		
	Bond Funds	20,000	-0-
<b>009.</b>	City of Raceland - Loop Lines for Chinn Street and Winters Drive (WX21089050)		
	Bond Funds	20,000	-0-

<b>010.</b>	City of Raceland - Meade Street and Turley Avenue Water Upgrade (WX21089052)		
	Bond Funds	17,000	-0-
<b>011.</b>	City of Raceland - System Improvement and Maintenance Project (WX21089051)		
	Bond Funds	60,000	-0-
<b>012.</b>	City of Raceland - Water and Sewer Upgrades and Water Park Infrastructure		
	Bond Funds	150,000	-0-
<b>013.</b>	City of Russell - 1,000,000 Gallon Water Tank (WX21089016)		
	Bond Funds	350,000	-0-
<b>014.</b>	City of Russell - Greenup County Fiscal Court - Russell/Flatwoods - Russell Heights (SX21089012)		Sewer
	Bond Funds	300,000	-0-
<b>015.</b>	City of South Shore - Sewer Upgrades and Expansion		
	Bond Funds	200,000	-0-
<b>016.</b>	City of Worthington - Storm/Sanitary Sewer Rehabilitation		
	Bond Funds	400,000	-0-
<b>017.</b>	City of Wurtland - Refurbish Uhlen Branch Water Tank (WX21089054)		
	Bond Funds	47,000	-0-
<b>018.</b>	City of Wurtland - Rehabilitate and Refurbish the Chinn Street Lift Station (SX21089059)		
	Bond Funds	55,000	-0-
<b>019.</b>	City of Wurtland - Sewer Upgrades and Maintenance		
	Bond Funds	200,000	-0-
<b>020.</b>	Greenup County Fiscal Court - South Shore - McKell Branch Water and Sewer Work for Meeting Room Expansion/Renovation		
	Bond Funds	50,000	-0-
<b>Hardin County</b>			
<b>001.</b>	City of West Point - Water and Sewer Improvements (SX21093001)		
	Bond Funds	300,000	-0-
<b>002.</b>	Hardin County Fiscal Court - 144 Transmission Main Upgrade Project		
	Bond Funds	300,000	-0-
<b>003.</b>	Hardin County Fiscal Court - 1882 Transmission Main Upgrade Project		
	Bond Funds	450,000	-0-
<b>004.</b>	Hardin County Fiscal Court - Renovation of the City Springs Water Plant in Elizabethtown		
	Bond Funds	1,000,000	-0-
<b>Harrison County</b>			
<b>001.</b>	City of Cynthiana - Phase II Water System Improvements (WX21097002)		
	Bond Funds	835,000	-0-

<b>002.</b>	Harrison County Water Association - Phase 10A (East) Water Main Extensions (WX21097015)		
	Bond Funds	820,000	-0-
<b>Hart County</b>			
<b>001.</b>	City of Munfordville - Foodland (SX21099004)		
	Bond Funds	100,000	-0-
<b>002.</b>	City of Munfordville - Water Improvements (WX21099019)		
	Bond Funds	150,000	-0-
<b>003.</b>	Edmonson County Water District - Hart County Waterlines (WX21061024)		
	Bond Funds	450,000	-0-
<b>004.</b>	Green River Valley Water District - Hardy Valley Road 2700 Feet Water Extension Project (WX21099013)		
	Bond Funds	60,000	-0-
<b>005.</b>	Green River Valley Water District - Jones Schoolhouse Road Water Main Extensions (WX21099013)		
	Bond Funds	40,000	-0-
<b>006.</b>	Green River Valley Water District - Maxey Knob Road Pumping Station (WX21099013)		
	Bond Funds	40,000	-0-
<b>007.</b>	Green River Valley Water District - Walter Steward Road, Poteet Road, Eudura Road, and Northtown Water Extensions (WX21099013)		
	Bond Funds	140,000	-0-
<b>008.</b>	Green River Valley Water District - Water Improvement (WX21099004)		
	Bond Funds	500,000	-0-
<b>009.</b>	Green River Valley Water District - Water Main Extensions Magnolia Gas Storage Road (WX21099013)		
	Bond Funds	20,000	-0-
<b>Henry County</b>			
<b>001.</b>	City of Campbellsburg - Henry County Industrial Park Pump Station		
	Bond Funds	100,000	-0-
<b>002.</b>	City of Eminence - Wastewater Treatment Plant Expansion (SX21103001)		
	Bond Funds	350,000	-0-
<b>003.</b>	City of New Castle - Wastewater Line Extension (SX21103007)		
	Bond Funds	425,000	-0-
<b>004.</b>	City of New Castle - Wastewater Line Extension (WX21103007)		
	Bond Funds	50,000	-0-
<b>005.</b>	Henry County Water District #2 - KY 389 Extension (WX21103030)		
	Bond Funds	25,000	-0-
<b>006.</b>	Henry County Water District #2 - Pennywinkle Road Extension		

	(WX21103031)		
	Bond Funds	55,000	-0-
<b>007.</b>	Henry County Water District #2 - Systemwide Betterment Project		
	(WX21103042)		
	Bond Funds	50,000	-0-
<b>008.</b>	Henry County Water District #2 - Systemwide Betterment Project		
	(WX21103042)		
	Bond Funds	300,000	-0-
<b>Hickman County</b>			
<b>001.</b>	City of Clinton - Sewer Rehabilitation (SX21105004)		
	Bond Funds	730,000	-0-
<b>002.</b>	City of Columbus - Water System		
	Bond Funds	65,000	-0-
<b>003.</b>	City of Columbus - Water System (WX21105005)		
	Bond Funds	40,000	-0-
<b>004.</b>	Hickman County Fiscal Court - Clinton - Automated Metering		
	(WX21105006)		
	Bond Funds	65,000	-0-
<b>Jessamine County</b>			
<b>001.</b>	City of Nicholasville - Alta Avenue Parallel Sewer Project (SX21113013)		
	Bond Funds	200,000	-0-
<b>002.</b>	City of Nicholasville - Brookview Sewer Replacement Project (SX21113014)		
	Bond Funds	400,000	-0-
<b>003.</b>	City of Nicholasville - Crenshaw Lane Waterline Extension (WX21113026)		
	Bond Funds	150,000	-0-
<b>004.</b>	City of Nicholasville - Lone Oak Sewer Extension Project (SX21113012)		
	Bond Funds	150,000	-0-
<b>005.</b>	City of Wilmore - Asbury College Campus Water Mains Replacement		
	(WX21113025) and (WX21113024)		
	Bond Funds	200,000	-0-
<b>006.</b>	City of Wilmore - Asbury College/Fletcher Early Building Waterline		
	Replacement (WX21113025)		
	Bond Funds	20,000	-0-
<b>007.</b>	City of Wilmore - System Improvements		
	Bond Funds	80,000	-0-
<b>008.</b>	City of Wilmore - Wilmore Wastewater System Improvements (SX21113003)		
	Bond Funds	100,000	-0-

<b>009.</b>	Jessamine South Elkhorn Water District - Catnip Hill Pike 1.0 Mg Elevated Storage (WX21113016)		Tank
	Bond Funds	1,000,000	-0-
<b>Kenton County</b>			
<b>001.</b>	City of Covington - Covington Flood Protection Storm Sewer Project		
	Bond Funds	300,000	-0-
<b>002.</b>	City of Covington - Pointe Benton Storm Water Sewer Improvement Project		
	Bond Funds	300,000	-0-
<b>003.</b>	Kenton County Fiscal Court - Storm Work Dixie Sidewalk at Notre Dame Academy		
	Bond Funds	124,000	-0-
<b>004.</b>	Northern Kentucky Water District - Pike Street - Bromley		
	Bond Funds	300,000	-0-
<b>005.</b>	Northern Kentucky Water District - Robbins Street Water Project		
	Bond Funds	300,000	-0-
<b>006.</b>	Northern Kentucky Water District - Unserved and Underserved Project 2 (WX21117207)		
	Bond Funds	500,000	-0-
<b>007.</b>	Sanitation District #1 of Northern Kentucky - Latonia Combined Sewer Separation (SX21117102)		Project
	Bond Funds	950,000	-0-
<b>008.</b>	Sanitation District #1 of Northern Kentucky - Montague Sewer Replacement (SX21117103)		
	Bond Funds	500,000	-0-
<b>Larue County</b>			
<b>001.</b>	City of Hodgenville - Hamilton Acres Sanitary Sewer Rehabilitation (SX21123003)		
	Bond Funds	200,000	-0-
<b>002.</b>	City of Hodgenville - Water and Sewer Improvements (SX21123002)		
	Bond Funds	300,000	-0-
<b>003.</b>	Larue County Water District #1 - Howardstown Water Tower and Line Extensions (WX21123016)		
	Bond Funds	250,000	-0-
<b>004.</b>	Larue County Water District #1 - Water Storage Tank (WX21123007)		
	Bond Funds	300,000	-0-
<b>005.</b>	Larue County Water District #1 - Waterline Upgrade (WX21123006)		
	Bond Funds	450,000	-0-
<b>Lewis County</b>			
<b>001.</b>	Garrison Quincy Water District - Garrison Sewer Phase I (SX21135001)		
	Bond Funds	1,000,000	-0-

<b>002.</b>	Lewis County Sanitation District #1 - South Along KY 57 and Subdivision On Evans Rd (SX21135008)		
	Bond Funds	200,000	-0-
<b>003.</b>	Lewis County Sanitation District #1 - South Along KY 57 and Subdivision On Evans Road (SX21135008)		
	Bond Funds	200,000	-0-
<b>004.</b>	Vanceburg Electric Plant Board - AA Collector (SX21135012)		
	Bond Funds	100,000	-0-

**Lincoln County**

<b>001.</b>	City of Crab Orchard - Sewer Lift Station Cedar Creek Area		
	Bond Funds	90,000	-0-
<b>002.</b>	City of Crab Orchard - Upgrade Waterlines at Stingy Creek Road and Fall Lick Road		
	Bond Funds	158,400	-0-
<b>003.</b>	City of Stanford Water Commission - Wastewater Treatment Plant Expansion Project (SX21137003)		
	Bond Funds	1,551,600	-0-

**Livingston County**

<b>001.</b>	City of Grand Rivers - Sewer System Improvements (SX21139001)		
	Bond Funds	500,000	-0-
<b>002.</b>	City of Salem - Lift Station Upgrade		
	Bond Funds	50,000	-0-
<b>003.</b>	City of Salem - Water Meters Upgrade		
	Bond Funds	50,000	-0-
<b>004.</b>	City of Smithland - Wastewater Treatment Plant Improvement		
	Bond Funds	100,000	-0-
<b>005.</b>	Crittenden-Livingston County Water District - Debt Retirement		
	Bond Funds	600,000	-0-
<b>006.</b>	Grand Rivers Water District - W. D. Gillium Road Extension		
	Bond Funds	80,000	-0-
<b>007.</b>	Grand Rivers Water District - West Mississippi Street Extension		
	Bond Funds	70,000	-0-
<b>008.</b>	Ledbetter Water and Sanitation District - Debt Retirement		
	Bond Funds	100,000	-0-

**Logan County**

<b>001.</b>	City of Adairville - Water Tank Upgrade		
	Bond Funds	150,000	-0-
<b>002.</b>	City of Auburn - Sewer		
	Bond Funds	150,000	-0-
<b>003.</b>	City of Lewisburg - Sewer		
	Bond Funds	200,000	-0-

<b>004.</b>	Logan-Todd Water Commission - Plant Expansion		
	Bond Funds	650,000	-0-
<b>005.</b>	Logan-Todd Water Commission - Territory Expansion		
	Bond Funds	600,000	-0-
<b>Lyon County</b>			
<b>001.</b>	City of Eddyville - Sewer Lift Station and Sewer Line (SX21143004)		
	Bond Funds	230,000	-0-
<b>002.</b>	City of Kuttawa - I-24 Pump Station and Force Main Replacement (SX21143006)		
	Bond Funds	230,000	-0-
<b>003.</b>	Lyon County Water Consortium - Regional Water Project (WX21143002)		
	Bond Funds	300,000	-0-
<b>004.</b>	Lyon County Water District - Sewer Line Extensions (SX21143003)		
	Bond Funds	400,000	-0-
<b>Madison County</b>			
<b>001.</b>	City of Berea - Water and Sewer Lines		
	Bond Funds	150,000	-0-
<b>002.</b>	City of Berea - Water and Sewer Line		
	Bond Funds	100,000	-0-
<b>003.</b>	City of Berea - Water Interconnection		
	Bond Funds	500,000	-0-
<b>004.</b>	City of Richmond - Duncannon Water Tower Utilities		
	Bond Funds	750,000	-0-
<b>005.</b>	Madison County Utilities District - District Improvements Phase III		
	Bond Funds	250,000	-0-
<b>006.</b>	Northern Madison Sewer District - Boones Trace Wastewater Interconnection Project		
	Bond Funds	600,000	-0-
<b>007.</b>	Northern Madison Sewer District - Whitehall State Shrine Lift Station		
	Bond Funds	800,000	-0-
<b>008.</b>	Southern Madison Water District - Scaffold Cane Water Improvement Project		
	Bond Funds	250,000	-0-
<b>Marion County</b>			
<b>001.</b>	City of Lebanon - Bradfordsville Road Extension		
	Bond Funds	80,000	-0-
<b>002.</b>	City of Lebanon - Lebanon Industrial Development Authority - Industrial Site Water and Sewer (WX21155007)		
	Bond Funds	350,000	-0-
<b>003.</b>	Lebanon/Marion County Industrial Foundation - Industrial Site Water and Sewer (SX21155003)		
	Bond Funds	420,000	-0-

<b>004.</b>	Marion County Water District - Lebanon to Loretto Transmission Main		
	Bond Funds	200,000	-0-
<b>005.</b>	Marion County Water District - Water Storage Tank (WX21155020)		
	Bond Funds	725,000	-0-
<b>006.</b>	Marion County Water District - Waterline Upgrade On Hwy 527 (WX21155019)		
	Bond Funds	300,000	-0-
<b>Marshall County</b>			
<b>001.</b>	Marshall County Fiscal Court - Marshall County Water Vision 2020 Plan Phase II (WX21157046)		
	Bond Funds	1,800,000	-0-
<b>002.</b>	Marshall County Sanitation District #2 - Plant Upgrade (SX21157022)		
	Bond Funds	88,000	-0-
<b>Mason County</b>			
<b>001.</b>	Buffalo Trail Water Association - 1029 to Mason Rd (WX21161025)		
	Bond Funds	200,000	-0-
<b>002.</b>	Buffalo Trail Water Association - US 62 Waterlines (WX21161025)		
	Bond Funds	250,000	-0-
<b>003.</b>	Maysville Utility Commission - Second Street Upgrade (WX21161026)		
	Bond Funds	25,000	-0-
<b>004.</b>	Maysville Utility Commission - West End Waterlines (WX21161026)		
	Bond Funds	400,000	-0-
<b>005.</b>	Western Lewis Rectorville Water and Gas District - System Upgrades, Looping (WX21161016)		
	Bond Funds	250,000	-0-
<b>006.</b>	Western Lewis Rectorville Water and Gas District - Water Interconnects and Office Building and Water Treatment Plant Upgrade (WX21161020)		
	Bond Funds	235,000	-0-
<b>007.</b>	Western Lewis Rectorville Water and Gas District - Water Treatment Plant Upgrade (WX21161020)		
	Bond Funds	250,000	-0-
<b>008.</b>	Western Mason Water District - Line Extension - T Wenz Road to Last Property (WX21161028)		
	Bond Funds	20,000	-0-
<b>McCracken County</b>			
<b>001.</b>	Paducah McCracken County Joint Sewer Agency - Long Term Control Plan (SX21145167)		
	Bond Funds	400,000	-0-
<b>002.</b>	Paducah McCracken County Joint Sewer Agency - Massac Creek Pump		

	Station and Force Main (SX21145172)		
	Bond Funds	1,300,000	-0-
<b>003.</b>	Paducah McCracken County Joint Sewer Agency - Sanitary Sewer Overflow Plan (SX21145173)		
	Bond Funds	400,000	-0-
<b>004.</b>	Paducah McCracken County Joint Sewer Agency - Wastewater Treatment Plant Headworks Improvements (SX21145028)		
	Bond Funds	1,300,000	-0-
<b>McCreary County</b>			
<b>001.</b>	McCreary County Water District - Emergency Water Plant Power Supply (WX21147023)		
	Bond Funds	225,000	-0-
<b>002.</b>	McCreary County Water District - KY 1651 and Bald Knob Area Water Extensions and Transmission Main Improvements (WX21147009)		
	Bond Funds	775,000	-0-
<b>003.</b>	McCreary County Water District - Main Booster Pump Station		
	Bond Funds	100,000	-0-
<b>004.</b>	McCreary County Water District - Water Storage Tank Retrofit (WX21147024)		
	Bond Funds	400,000	-0-
<b>McLean County</b>			
<b>001.</b>	Beech Grove Water Board - Beech Grove Looping Project (WX21149021)		
	Bond Funds	300,000	-0-
<b>002.</b>	Beech Grove Water Board - Waterline Extension Project (WX21149011)		
	Bond Funds	50,000	-0-
<b>003.</b>	City of Livermore - Livermore Water Improvement		
	Bond Funds	200,000	-0-
<b>004.</b>	McLean County Fiscal Court - Beech Grove 593 Area (WX21149021)		
	Bond Funds	200,000	-0-
<b>005.</b>	McLean County Fiscal Court - Calhoun-Livermore Interconnect		
	Bond Funds	250,000	-0-
<b>006.</b>	McLean County Fiscal Court - Fire Hydrants (WX21149010)		
	Bond Funds	60,000	-0-
<b>007.</b>	McLean County Fiscal Court - Hydrant Installation Program (WX21149010)		
	Bond Funds	100,000	-0-
<b>008.</b>	McLean County Fiscal Court - Island Pump Station (WX21149011)		
	Bond Funds	30,000	-0-
<b>009.</b>	McLean County Fiscal Court - KY 431 Water Tank (WX21149022)		

	Bond Funds	250,000	-0-
<b>010.</b>	McLean County Fiscal Court - Waterline Extensions		
	Bond Funds	200,000	-0-
<b>Meade County</b>			
<b>001.</b>	City of Brandenburg - Sewer Line Extension		
	Bond Funds	303,000	-0-
<b>002.</b>	City of Muldraugh - Waterline Replacement		
	Bond Funds	122,000	-0-
<b>003.</b>	City of Muldraugh - Wilson Street Waterline Replacement		
	Bond Funds	186,000	-0-
<b>004.</b>	Meade County Water District - Phase VII Water System Improvements (WX21163014)		
	Bond Funds	1,449,000	-0-
<b>Mercer County</b>			
<b>001.</b>	Lake Village Water Association - Adams Lane Tank (WX21167012)		
	Bond Funds	350,000	-0-
<b>002.</b>	Mercer County Sanitation District - Kentucky Agricultural Heritage Center/McAfee Wastewater Conveyance Project (SX21167011)		
	Bond Funds	740,000	-0-
<b>003.</b>	Mercer County Sanitation District - KY Agricultural Heritage Center/McAfee Wastewater Conveyance Project (SX21167011)		
	Bond Funds	260,000	-0-
<b>004.</b>	North Mercer Water District - Mackville Road Improvements (WX21167015)		
	Bond Funds	400,000	-0-
<b>Metcalf County</b>			
<b>001.</b>	City of Edmonton - Sewer System Upgrade and Expansion		
	Bond Funds	100,000	-0-
<b>002.</b>	City of Edmonton - Sewer System Upgrades and Expansion		
	Bond Funds	100,000	-0-
<b>003.</b>	City of Edmonton - Waterline Expansion and System Improvements		
	Bond Funds	800,000	-0-
<b>004.</b>	Metcalf County Fiscal Court - Water Project Expansions		
	Bond Funds	200,000	-0-
<b>Monroe County</b>			
<b>001.</b>	City of Gamaliel - Sewer System Upgrades		
	Bond Funds	25,000	-0-
<b>002.</b>	City of Tompkinsville - East Industrial Park Sewer Improvements		

	(SX21171013)		
	Bond Funds	100,000	-0-
<b>003.</b>	City of Tompkinsville - Sewer System Upgrades and Expansion		
	Bond Funds	200,000	-0-
<b>004.</b>	Monroe-Tompkinsville Regional Water Treatment Plant - Monroe - Tompkinsville Regional Water Treatment Plant (WX21171027)		
	Bond Funds	1,250,000	-0-
<b>Montgomery County</b>			
<b>001.</b>	City of Jeffersonville - Jeffersonville Water - Various Water Projects		
	Bond Funds	175,000	-0-
<b>002.</b>	City of Mount Sterling - Mt. Sterling Water District - Various Water and Sewer Projects		
	Bond Funds	346,250	-0-
<b>003.</b>	Gateway Area Development District - Feasibility Study - 201 Plan Sanitation District #2		
	Bond Funds	40,000	-0-
<b>004.</b>	Gateway Area Development District - Regional Water Interconnect - Match/Debt Retirement		
	Bond Funds	38,750	-0-
<b>005.</b>	Levee Water District - Various Water Projects/Welch Road		
	Bond Funds	175,000	-0-
<b>006.</b>	Montgomery County Fiscal Court - Judy Water Association - Various Water Projects		
	Bond Funds	175,000	-0-
<b>007.</b>	Montgomery County Fiscal Court - Sanitation District #2 - Various Water and Sewer Projects		
	Bond Funds	250,000	-0-
<b>008.</b>	Montgomery County Fiscal Court - Various Sewer Projects		
	Bond Funds	250,000	-0-
<b>009.</b>	Montgomery Water District #1 - Various Water Projects		
	Bond Funds	175,000	-0-
<b>010.</b>	Reid Village Water District - Various Water Projects		
	Bond Funds	175,000	-0-
<b>Nelson County</b>			
<b>001.</b>	City of Bardstown - Town Creek Interceptor (SX21179016)		
	Bond Funds	245,000	-0-
<b>002.</b>	City of New Haven - Sewer System I and I Rehabilitation Project (SX21179015)		
	Bond Funds	355,000	-0-
<b>003.</b>	City of New Haven - Sewer System Upgrades (SX21179011)		
	Bond Funds	500,000	-0-
<b>004.</b>	Larue County Water District - Nelson County Waterline Extensions		

	(WX21179003)		
	Bond Funds	150,000	-0-
<b>005.</b>	Nelson County Fiscal Court - Water Storage Tank for Water Treatment Plant		
	Bond Funds	1,000,000	-0-
<b>006.</b>	North Nelson Water District - Louisville Road Project (WX21179001)		
	Bond Funds	500,000	-0-
<b>Nicholas County</b>			
<b>001.</b>	Nicholas County Fiscal Court - 0.9 mile Waterline Extension KY 1658		
	Bond Funds	90,000	-0-
<b>002.</b>	Nicholas County Fiscal Court - 1.0 mile Waterline Extension KY 1308		
	Bond Funds	95,000	-0-
<b>003.</b>	Nicholas County Fiscal Court - Carlisle Regional Wastewater Improvement Program (SX21181002)		
	Bond Funds	125,000	-0-
<b>004.</b>	Nicholas County Sanitation District #2 - Lake Carnico Area Sanitary System Project (SX21181003)		
	Bond Funds	1,100,500	-0-
<b>Oldham County</b>			
<b>001.</b>	City of Pewee Valley - Hwy 362 Project		
	Bond Funds	200,000	-0-
<b>002.</b>	Oldham County Fiscal Court - Hwy 146 Buckner Project		
	Bond Funds	50,000	-0-
<b>003.</b>	Oldham County Fiscal Court - Oldham County Sewer District - Sewer Plant Upgrade		
	Bond Funds	950,000	-0-
<b>004.</b>	Oldham County Water District - Systemwide Improvements (WX21185044)		
	Bond Funds	2,000,000	-0-
<b>Owen County</b>			
<b>001.</b>	City of Owenton - Completion of New Water Intake		
	Bond Funds	400,000	-0-
<b>002.</b>	Owen County Fiscal Court - Carrollton Utilities - Eagle Creek Owen County Wastewater (SX21187100)		Project
	Bond Funds	400,000	-0-
<b>003.</b>	Owen County Fiscal Court - Phase IV Waterline Expansion in Rural Owen County and Eagle Creek Sewer Extension Project (SX21187100)		
	Bond Funds	400,000	-0-
<b>004.</b>	Peaks Mill Water District - Harmony Road Owen County (WX21187215)		
	Bond Funds	550,000	-0-
<b>Pendleton County</b>			
<b>001.</b>	Pendleton County Fiscal Court - Northern Pendleton County Regional Wastewater Treatment Plant (SX21191311)		

	Bond Funds	1,025,000	-0-
<b>002.</b>	Pendleton County Fiscal Court - Water Projects Phase I (WX21191507)		
	Bond Funds	450,000	-0-
<b>Powell County</b>			
<b>001.</b>	City of Clay City - Various Water and Sewer Projects		
	Bond Funds	200,000	-0-
<b>002.</b>	City of Stanton - Various Water and Sewer Projects		
	Bond Funds	200,000	-0-
<b>003.</b>	Powell County Fiscal Court - Beechfork Water District Repair Water Storage Tank		
	Bond Funds	250,000	-0-
<b>004.</b>	Powell County Fiscal Court - Cow Creek Water Project		
	Bond Funds	200,000	-0-
<b>005.</b>	Powell County Fiscal Court - Joint Clay City/Stanton Regional Sewer Plant		
	Bond Funds	500,000	-0-
<b>006.</b>	Powell County Fiscal Court - Powell Valley Water District - Various Water and Sewer Projects		
	Bond Funds	200,000	-0-
<b>Pulaski County</b>			
<b>001.</b>	Bronston Water Association - 500,000 Gallon Water Storage Tank (WX21199050)		
	Bond Funds	700,000	-0-
<b>002.</b>	Bronston Water Association - Frazier Chapel Road Project		
	Bond Funds	100,000	-0-
<b>003.</b>	City of Burnside - Burnside Sewer Project		
	Bond Funds	700,000	-0-
<b>004.</b>	City of Burnside - Wastewater Collection System – Contract "b" – Phase 2 (SX21199032)		
	Bond Funds	250,000	-0-
<b>005.</b>	City of Eubank - Water System Improvements Project (WX21199028)		
	Bond Funds	75,000	-0-
<b>006.</b>	City of Somerset - Ferguson/Jacksboro Street Waterline Rehabilitation (WX21199075)		
	Bond Funds	250,000	-0-
<b>007.</b>	Pulaski County Fiscal Court - Pulaski Water - Western District		
	Bond Funds	300,000	-0-
<b>008.</b>	Southeastern Water Association - Sand Gap Road (WX21199069)		
	Bond Funds	200,000	-0-
<b>009.</b>	Southeastern Water Association - Eula Road Waterline Extension		
	Bond Funds	40,000	-0-
<b>010.</b>	Southeastern Water Association - Little Rock Road/Big Rock Road Waterline Extensions		

	Bond Funds	45,000	-0-
<b>011.</b>	Southeastern Water Association - Pee Ridge Road Waterline Extensions		
	Bond Funds	240,000	-0-
<b>012.</b>	Western Pulaski County Water District - New US 27 Waterline Extension (WX21199079)		
	Bond Funds	280,000	-0-

**Robertson County**

<b>001.</b>	Buffalo Trail Water Association - Start at 539 at US 62 Nursing Home to Louderback Lane (WX21201009)		
	Bond Funds	500,000	-0-
<b>002.</b>	City of Mount Olivet - 165 to State Barn, Briely Ridge, Cresent Hill, Bentley Court, US 62, and Reed Lane (WX21201002)		
	Bond Funds	320,000	-0-
<b>003.</b>	City of Mount Olivet - Sewer Extension to New School at US 62 and KY 616 (SX21201003)		
	Bond Funds	200,000	-0-

**Rowan County**

<b>001.</b>	Gateway Area Development District - Regional Water Interconnect - Match/Debt Retirement		
	Bond Funds	33,750	-0-
<b>002.</b>	Morehead Utility Plant Board - Cardinal Lane Sewer Project (SX21205027)		
	Bond Funds	224,850	-0-
<b>003.</b>	Morehead Utility Plant Board - City of Morehead - Phase II Sewer Rehab Project for Morehead/Rowan County		
	Bond Funds	789,600	-0-
<b>004.</b>	Morehead Utility Plant Board - Standby Power Generator Project		
	Bond Funds	170,000	-0-
<b>005.</b>	Rowan Water, Inc. - System Upgrades - Waterline Extension and Waterline Upgrades/Cranston State Route 377		Road
	Bond Funds	1,381,800	-0-

**Russell County**

<b>001.</b>	City of Jamestown - Waterline Extensions		
	Bond Funds	300,000	-0-
<b>002.</b>	City of Russell Springs - Fairgrounds and Gentry Mill Lift Station Modification (SX21207010)		
	Bond Funds	200,000	-0-
<b>003.</b>	City of Russell Springs - Sewer Extensions - No. 1 (SX21207001)		
	Bond Funds	700,000	-0-
<b>004.</b>	City of Russell Springs - Waterline Extensions		
	Bond Funds	350,000	-0-

**Scott County**

<b>001.</b>	City of Georgetown - Wastewater Treatment Plant #2 - Northern Scott County Sewer Extension (SX21209003)		
	Bond Funds	1,380,000	-0-
<b>002.</b>	City of Georgetown - Wastewater Treatment Plant #2 - Northern Scott County Sewer Extension (SX21209003)		
	Bond Funds	345,000	-0-
<b>003.</b>	Scott County Fiscal Court - Scott County Reservoir (WX21209003)		
	Bond Funds	1,075,000	-0-

**Shelby County**

<b>001.</b>	North Shelby Water Company - Hwy 55 Upgrade/Loop (WX21211056)		
	Bond Funds	125,000	-0-
<b>002.</b>	Shelby County Fiscal Court - Expansion of 24" pipeline from Jefferson County through Shelby County		
	Bond Funds	500,000	-0-
<b>003.</b>	Shelby County Fiscal Court - Hwy 55 Upgrade/Loop (WX21211056)		
	Bond Funds	100,000	-0-
<b>004.</b>	Shelby County Fiscal Court - Todds Point Tank		
	Bond Funds	675,000	-0-
<b>005.</b>	Shelbyville Municipal Water and Sewer Commission - Benson Road Gravity Sewers (SX21211010)		
	Bond Funds	100,000	-0-
<b>006.</b>	Shelbyville Municipal Water and Sewer Commission - Glenview Gravity Sewers (SX21211011)		
	Bond Funds	250,000	-0-
<b>007.</b>	Shelbyville Municipal Water and Sewer Commission - Governor Square Pump Station (SX21211003)		
	Bond Funds	500,000	-0-
<b>008.</b>	Shelbyville Municipal Water and Sewer Commission - Town and Country Force Main (SX21211005)		
	Bond Funds	140,000	-0-
<b>009.</b>	US 60 Water District - KY 395 to Cook (WX21211060)		
	Bond Funds	37,500	-0-
<b>010.</b>	West Shelby Water District - Hwy 148 Pump Station (WX21211011)		
	Bond Funds	100,000	-0-
<b>011.</b>	West Shelby Water District - Montclair Subdivision Upgrade		
	Bond Funds	250,000	-0-

**Simpson County**

<b>001.</b>	City of Franklin - Water Tank and Treatment Plant Improvements		
	Bond Funds	510,100	-0-

<b>002.</b>	Simpson County Water District - Blackjack Area Fire Protection (WX21213021)		
	Bond Funds	294,000	-0-
<b>003.</b>	Simpson County Water District - Fire Protection and Distribution Improvements (WX21213019)		
	Bond Funds	697,000	-0-
<b>Spencer County</b>			
<b>001.</b>	City of Taylorsville - Sewer System Expansion - Priority 2 (SX21215002)		
	Bond Funds	300,000	-0-
<b>002.</b>	Spencer County Fiscal Court - Sewer Improvements		
	Bond Funds	50,000	-0-
<b>003.</b>	Spencer County Fiscal Court - Spencer County Phase IV Water Project		
	Bond Funds	970,000	-0-
<b>004.</b>	Spencer County Fiscal Court - Spencer County Phase IV Water Project (WX21215094)		
	Bond Funds	200,000	-0-
<b>Taylor County</b>			
<b>001.</b>	City of Campbellsville - Raw Waterline (WX21217011)		
	Bond Funds	300,000	-0-
<b>002.</b>	City of Campbellsville - Sewer Lines for Campbellsville Bypass		
	Bond Funds	250,000	-0-
<b>003.</b>	City of Campbellsville - Taylor County Industrial Park Extension (WX21217005)		
	Bond Funds	500,000	-0-
<b>004.</b>	City of Campbellsville - Various Water Projects		
	Bond Funds	200,000	-0-
<b>005.</b>	City of Campbellsville - Water and Sewer for Campbellsville/Taylor County Regional and Various Projects		Health Center
	Bond Funds	250,000	-0-
<b>006.</b>	City of Campbellsville - Water Storage Tank Improvements (WX21217006)		
	Bond Funds	250,000	-0-
<b>Todd County</b>			
<b>001.</b>	City of Trenton - Sewer Lines		
	Bond Funds	150,000	-0-
<b>002.</b>	Logan/Todd Water Commission - Plant Expansion		
	Bond Funds	950,000	-0-
<b>003.</b>	Logan/Todd Water Commission - Territory Expansion		
	Bond Funds	600,000	-0-

**Trigg County**

<b>001.</b>	Barkley Lake Water District - Water System Improvement Phase I (WX21221003)		
	Bond Funds	500,000	-0-
<b>002.</b>	Barkley Lake Water District - Water System Improvement Phase I (WX21221003)		
	Bond Funds	500,000	-0-
<b>003.</b>	City of Cadiz - Sewer Main Replacement (SX21221002)		
	Bond Funds	550,000	-0-

**Trimble County**

<b>001.</b>	Trimble County Fiscal Court - Upper Middle Creek Waterline Extension		
	Bond Funds	50,000	-0-
<b>002.</b>	Trimble County Water District #1 - Water System Improvement Project (WX21223020)		
	Bond Funds	950,000	-0-

**Warren County**

<b>001.</b>	Bowling Green Municipal Utilities - Alternative Water Study (WX21227050)		
	Bond Funds	150,000	-0-
<b>002.</b>	Bowling Green Municipal Utilities - Bowling Green Water Improvement (WX21227014)		
	Bond Funds	650,000	-0-
<b>003.</b>	Bowling Green Municipal Utilities - Lift Station #3 and Lift Station #4 Upgrades (SX21227011)		
	Bond Funds	200,000	-0-
<b>004.</b>	Bowling Green Municipal Utilities - Pascoe Pump Station and Force Main (SX21227001)		
	Bond Funds	450,000	-0-
<b>005.</b>	Warren County Water District - Nashville Road Pump Station and Waterline (WX21227026)		
	Bond Funds	550,000	-0-
<b>006.</b>	Warren County Water District - Three Springs Road Tank and Waterline (WX21227031)		
	Bond Funds	1,450,000	-0-

**Washington County**

<b>001.</b>	City of Springfield - Phase IV Springfield Water Project (WX21229003)		
	Bond Funds	950,000	-0-
<b>002.</b>	City of Springfield - Springfield Water System Improvements		
	Bond Funds	100,000	-0-
<b>003.</b>	City of Springfield - Wastewater Replacement/Upgrade		
	Bond Funds	400,000	-0-
<b>004.</b>	Washington County Fiscal Court - Springfield Water System Improvements		

Bond Funds	300,000	-0-
<b>Wayne County</b>		
<b>001.</b> City of Monticello - Downtown Water Renovation (WX21231006)		
Bond Funds	300,000	-0-
<b>002.</b> Monticello Utility Commission - Monticello Utility Commission		
Bond Funds	625,000	-0-
<b>003.</b> Monticello Utility Commission - Various Waterline Extensions		
Bond Funds	550,000	-0-
<b>Woodford County</b>		
<b>001.</b> City of Midway - Woodford - Midway Water Tower Existing Debt Retirement (SX21209003)		
Bond Funds	500,000	-0-
<b>002.</b> City of Versailles - Sewer Disinfection Conversion		
Bond Funds	1,000,000	-0-
<b>003.</b> City of Versailles - Wastewater System Improvements (SX21239001)		
Bond Funds	300,000	-0-

→Section 3. 2008 Kentucky Acts Chapter 191, Section 3, is repealed, reenacted, and amended to read as follows:

The ~~above-referenced~~ projects *referenced in Sections 1 and 2 of this Act* shall be administered by the Kentucky Infrastructure Authority.

→Section 4. It is the intent of the General Assembly for this Act to reaffirm the passage of 2008 Regular Session HB 608/EN with veto. As such, the General Assembly has repealed and reenacted 2008 Kentucky Acts Chapter 191.

→Section 5. Sections 1, 2, and 3 of this Act shall be retroactively applied to April 28, 2008.

→Section 6. Whereas this Act repeals and reenacts 2008 Kentucky Acts Chapter 191, which details funding contained in the current state/executive branch budget, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon otherwise becoming law.

**Signed by the Governor March 20, 2009.**

## CHAPTER 51

### (HB 194)

AN ACT relating to child safety.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

→SECTION 1. A NEW SECTION OF KRS 199.892 TO 199.896 IS CREATED TO READ AS FOLLOWS:

- (1) *The Cabinet for Health and Family Services shall notify licensed child-care centers and certified family child-care homes on an ongoing basis, including during the license or certification application process and any monitoring visits, of the Kentucky Consumer Product Safety Program and the program's Web site. Licensed child-care centers shall post in a prominent location a notice of the existence of the Consumer Product Safety Program and the program's Web site.*
- (2) *The Cabinet for Health and Family Services may promulgate administrative regulations to carry out this section.*

(3) *This section may be cited as The Child Safety Act of 2009.*

**Signed by the Governor March 20, 2009.**

## CHAPTER 52

### (HB 202)

AN ACT relating to watercraft.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 136.1801 is amended to read as follows:

As used in KRS 136.1801 to 136.1806:

- (1) "Corporation" means any corporation, company, association, partnership, limited liability company, limited liability partnership, other business association, or person operating any watercraft for commercial purposes in the Commonwealth;
- (2) "Watercraft" means any boat, towboat, pushboat, barge, or similar vessel. Watercraft shall not include:
  - (a) Floating equipment used in construction, including but not limited to dredges, pile drivers, and flats;
  - (b) Houseboats;
  - (c) Fishing boats;
  - (d) Pleasure boats; or
  - (e) Commercial dining boats;
- (3) "Department" means the Department of Revenue;
- (4) "Operating" or "operated" means owned, leased, rented, or used;
- (5) "Local taxing district" means a local taxing jurisdiction or district, including a county, city, charter county, school district, consolidated local government, urban-county government, and special taxing district, which has a navigable waterway within its borders; and
- (6) "Navigable waterway" means and shall include the following:
  - (a) All of the Mississippi River within or bordering this state;
  - (b) All of the Ohio River within or bordering this state;
  - (c) The Kentucky River beginning at Ohio River mile marker 545.8 and ending at Kentucky River mile marker ~~65~~~~76~~;
  - (d) The Green River beginning at Ohio River mile marker 784.4 and ending at Green River mile marker ~~108.9~~~~143~~;
  - (e) The Tennessee River beginning at Ohio River mile marker 934.5 and ending at Tennessee River mile marker 62.4;
  - (f) The Cumberland River beginning at Ohio River mile marker ~~922.5~~~~920.5~~ and ending at Cumberland River mile marker 74.7;
  - (g) The Big Sandy River beginning at Ohio River mile marker 317.2 and ending at Big Sandy River mile marker 14.2;
  - (h) The Licking River beginning at Ohio River mile marker 470.2 and ending at Licking River mile marker ~~7~~~~8~~; and
  - (i) Any other waterway in this state utilized by a corporation for the transportation of watercraft during the previous calendar year.

➔Section 2. KRS 136.1803 is amended to read as follows:

On or before *May 15, 2009*~~[January 1, 2008]~~, and each *May 15*~~[year]~~ thereafter, each corporation operating watercraft within this state during the previous calendar year shall file on forms prescribed by the department, a detailed description of all watercraft it operated as of January 1 of the current year.

➔Section 3. KRS 136.1804 is amended to read as follows:

- (1) The department shall notify the corporation of the assessed value of its watercraft~~[by July 1 of]~~ each year, *as soon as possible after rates set by local authorities are provided to the department*. The corporation shall have forty-five (45) days from the date of the department's notice of assessment to protest as provided by KRS 131.110.
- (2) No appeal shall delay the collection or payment of taxes based upon the assessment in controversy. The corporation shall pay to the department all state and local taxing district taxes due on the undisputed value of its watercraft as stated in the protest filed under KRS 131.110. When the valuation is finally determined upon appeal, the corporation shall be billed for any additional tax and interest at the tax interest rate as defined in KRS 131.010(6) from the date the tax would have become due if the assessment had not been appealed. The provisions of KRS 134.390 shall apply to the tax bill.
- (3) The state and local taxing district taxes on the watercraft are due forty-five (45) days from the date of notice of assessment. The tangible property taxes on watercraft shall be collected in accordance with the provisions of KRS 134.020.
- (4) The state rate of taxation on watercraft shall be forty-five cents (\$0.45) upon each one hundred dollars (\$100) of assessed value of the watercraft.
- (5) The department shall annually calculate an aggregate local rate, which shall be imposed upon each one hundred dollars (\$100) of assessed value of the watercraft.
  - (a) The aggregate local rate shall be the sum of each local personal property tax rate for each local taxing district multiplied by a fraction, the numerator of which shall be the length of the navigable waterways in the local taxing district and the denominator of which shall be the total of the length of all navigable waterways in this state. Both the numerator and the denominator shall be adjusted, if necessary, by paragraph (b) of this subsection.
  - (b) For purposes of computing the local property tax rate in paragraph (a) of this section, the length of the navigable waterways of the Green River shall be reduced by fifty percent (50%) and the length of the navigable waterways of the Kentucky River shall be reduced by seventy-five percent (75%).
- (6) The watercraft taxes collected for local taxing districts by the department shall be distributed to each local taxing district based upon the local taxing district's fractional portion of the amount calculated in subsection (5) of this section.
- (7) Prior to distribution of taxes to local taxing districts, the department shall retain an administrative fee of one percent (1%) of the amount due each district. The fee imposed by this subsection shall have no effect upon the discount provided to taxpayers pursuant to KRS 134.020(2).

**Signed by the Governor March 20, 2009.**

## CHAPTER 53

### (HB 295)

AN ACT relating to public school facilities.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 157.420 is amended to read as follows:

Public school funds made available to the credit of each district during any year shall be received, held, and expended by the district board, subject to the provisions of law and administrative regulations of the Kentucky Board of Education. The following restrictions shall govern the expenditure of funds from the public school fund:

- (1) The salary paid any rank of teachers shall be at least equivalent to the amount set forth in the biennial budget schedule for each rank and experience for a term of one hundred eighty-five (185) days for full-time service during the regular school year.
- (2) Beginning with the 2004-2006 biennium, the Kentucky Board of Education shall not approve any working budget or salary schedule for local boards of education for any school year unless the one hundred eighty-five (185) day salary schedule for certified staff has been adjusted over the previous year's salary schedule by a percentage increase at least equal to the cost-of-living adjustment that is provided state government workers under the biennial budget. The base funding level in the program for support education excellence in Kentucky as defined in KRS 157.320 shall be increased by the statewide dollar value of the annual required cost-of-living percentage adjustment that shall be estimated on the sum of the previous year's statewide teachers' salaries.
- (3) A district that compensates its teachers or employees for unused sick leave at the time of retirement, pursuant to KRS 161.155, may create an escrow account to maintain the amount of funds necessary to pay teachers or employees who qualify for receipt of the benefit. The fund is limited to not more than fifty percent (50%) of the maximum liability for the current year to be determined according to the number of staff employed by the district on September 15. Interest generated by the account shall be calculated as part of the total amount. The funds shall not be used for any purpose other than compensation for unused sick leave at the time of retirement and shall not be considered as part of the general fund balance in determining available local revenue for purposes of KRS 157.620.
- (4)
  - (a) The per pupil capital outlay allotment for each district from the public school fund and from local sources shall be kept in a separate account and may be used by the district only for capital outlay projects approved by the chief state school officer in accordance with requirements of law, and based on a survey made in accordance with administrative regulations of the Kentucky Board of Education. These funds shall be used for the following capital outlay purposes:
    1. ~~{(a)}~~ For direct payment of construction costs;
    2. ~~{(b)}~~ For debt service on voted and funding bonds;
    3. ~~{(c)}~~ For payment or lease-rental agreements under which the board eventually will acquire ownership of a school plant;
    4. ~~{(d)}~~ For the retirement of any deficit resulting from overexpenditure for capital construction, if such deficit resulted from an emergency declared by the Kentucky Board of Education under KRS 160.550; and
    5. ~~{(e)}~~ As a reserve fund for the above-named purposes, to be carried forward in ensuing budgets.
  - (b) *A district may submit a request to the commissioner of education to use funds from the per pupil capital outlay allotment to purchase land for a new school or to modify an existing school if the project is included on the district facility plan for completion within eight (8) years. The land shall not be included in the calculation of the school district's unmet need. The commissioner may grant or deny the district's request at his or her discretion.*
  - (c) *A district which has experienced an increase in adjusted average daily attendance, as defined by administrative regulation, of twenty percent (20%) or more over a five (5) year period may submit a request to the commissioner of education to use capital outlay funds for the operation of a new school for the first two (2) years following its opening. The commissioner may grant or deny the district's request at his or her discretion.*
  - (d) *A local school district may submit a request to the commissioner of education to use capital outlay funds for maintenance expenditures or for the purchase of property insurance without forfeiting the district's participation in the School Facilities Construction Commission program. Maintenance requests may include other priorities that are not considered major renovations, such as repair, renovation, or system upgrades that are necessary to maintain the integrity of an existing school facility.*
- (5) The district may contribute capital outlay funds for energy conservation measures under guaranteed energy savings contracts pursuant to KRS 45A.345, 45A.352, and 45A.353. Use of these funds, provided in KRS 45A.353, 56.774, and 58.600, shall be based on the following:

- (a) The energy conservation measures shall include facility alteration;
  - (b) The energy conservation measures shall be identified in the district's approved facility plan;
  - (c) The current facility systems are consuming excess maintenance and operating costs;
  - (d) The savings generated by the energy conservation measures are guaranteed;
  - (e) The capital outlay funds contributed to the energy conservation measures shall be defined as capital cost avoidance as provided in KRS 45A.345(2) and shall be subject to the restrictions on usage as specified in KRS 45A.352(9); and
  - (f) The equipment that is replaced shall have exceeded its useful life as determined by a life-cycle cost analysis.
- (6) If any district has a special levy for capital outlay or debt service that is equal to the capital outlay allotment or a proportionate fraction thereof, and spends the proceeds of that levy for the above-named purposes, the chief state school officer under administrative regulations of the Kentucky Board of Education, may authorize the district to use all or a proportionate fraction of its capital outlay allotment for current expenses. However, a district which uses capital outlay funds for current expenses shall not be eligible to participate in the School Facilities Construction Commission funds, ***except when the current expenditures are approved by the commissioner of education under subsection (4)(b) or (c) of this section.***
- (7) If a survey shows that a school district has no capital outlay needs as shown in ~~paragraphs (a), (b), (c), and (d) of~~ subsection (4)***(a)1., 2., 3., and 4.*** of this section, upon approval of the chief state school officer, these funds may be used for school plant maintenance, repair, insurance on buildings, replacement of equipment, purchase of school buses, and the purchase of modern technological equipment, including telecommunications hardware, televisions, computers, and other technological hardware to be utilized for educational purposes only.
- (8) In surveying the schools, the Department of Education shall designate each school facility as a permanent, functional, or transitional center.
- (a) "Permanent center" means a center which meets the program standards approved by the Kentucky Board of Education, is located so that students are not subjected to an excessive amount of time being transported to the site, and has established an attendance area which will maintain enrollment at capacity but will also avoid overcrowding.
  - (b) "Functional center" means a center which does not meet all the criteria established for a permanent facility, but is adequate to meet accreditation program standards to insure no substantial academic or building deficiency. The facility plan shall include additions and renovations necessary to meet current accreditation standards for which federal, state, and local funds may be used.
  - (c) "Transitional center" means a center which the local board of education has determined shall no longer be designated permanent or functional. The center shall be destined to be closed and shall not be eligible for new construction, additions, or major renovation. However, the board of education shall maintain any operating transitional center to provide a safe and healthy environment for students.
- (9) If a local school board authorized elementary, middle, or secondary education classes in a facility of a historical settlement school on January 1, 1994, the board shall continue to use the facilities provided by the settlement school if the facilities meet health and safety standards for education facilities as required by administrative regulations. The local school board and the governing body of the settlement school shall enter into a cooperative agreement that delineates the role, responsibilities, and financial obligations for each party.

➔Section 2. KRS 157.440 is amended to read as follows:

- (1) (a) Notwithstanding any statutory provisions to the contrary, effective for school years beginning after July 1, 1990, the board of education of each school district may levy an equivalent tax rate as defined in subsection (9)(a) of KRS 160.470 which will produce up to fifteen percent (15%) of those revenues guaranteed by the program to support education excellence in Kentucky. The levy for the 1990-91 school year shall be made no later than October 1, 1989, and no later than October 1, 1990, for the 1991-92 school year, and by October 1 of each odd-numbered year thereafter. Effective with the 1990-91 school year, revenue generated by this levy shall be equalized at one hundred fifty percent (150%) of the statewide average per pupil assessment.

- (b) To participate in the Facilities Support Program of Kentucky, the board of education of each school district shall commit at least an equivalent tax rate of five cents (\$0.05) to debt service, new facilities, or major renovations of existing school facilities, *or the purchase of land if approved by the commissioner of education as provided in subsection (4)(b) of Section 1 of this Act*. The five cents (\$0.05) shall be in addition to the thirty cents (\$0.30) required by KRS 160.470(9) and any levy pursuant to paragraph (a) of this subsection. The levy shall be made no later than October 1 of each odd-numbered year. Eligibility for equalization funds for the biennium shall be based on the district funds committed to debt service on that date. The five cents (\$0.05) shall be equalized at one hundred fifty percent (150%) of the statewide average per pupil assessment. The equalization funds shall be committed to debt service to the greatest extent possible, but any excess equalization funds not needed for debt service shall be deposited to a restricted building fund account. The funds may be escrowed for future debt service or used to address categorical priorities listed in the approved facilities plan pursuant to KRS 157.420.
- (c) The board of education of each school district may contribute the levy equivalent tax rate of five cents (\$0.05) and equalization funds for energy conservation measures under guaranteed energy savings contracts pursuant to KRS 45A.345, 45A.352, and 45A.353. Use of these funds, as provided under KRS 45A.353, 56.774, and 58.600 shall be based on the following guidelines:
1. Energy conservation measures shall include facility alteration;
  2. Energy conservation measures shall be identified in the district's approved facility plan pursuant to KRS 157.420;
  3. The current facility systems are consuming excess maintenance and operating costs;
  4. The savings generated by the energy conservation measures are guaranteed;
  5. The levy equivalent tax rate of five cents (\$0.05) and equalization funds contributed to the energy conservation measures shall be defined as capital cost avoidance as provided in KRS 45A.345(2) and shall be subject to the restrictions on usage as specified in KRS 45A.352(9); and
  6. The equipment that is replaced has exceeded its useful life as determined by a life cycle cost analysis.
- (d) The rate levied by a district board of education under the provisions of this subsection shall not be subject to the public hearing provisions of KRS 160.470(7) or to the recall provisions of KRS 160.470(8).
- (e) A school district which is at or above the equivalent tax rates permitted under the provisions of the Kentucky Education Reform Act of 1990, 1990 Ky. Acts ch. 476, shall not be required to levy an equivalent tax rate which is lower than the rate levied during the 1989-90 school year.
- (2) (a) A district may exceed the maximum provided by subsection (1) of KRS 160.470 provided that, upon request of the board of education of the district, the county board of elections shall submit to the qualified voters of the district, in the manner of submitting and voting as prescribed in paragraph (b) of this subsection, the question whether a rate which would produce revenues in excess of the maximum provided by subsection (1) of KRS 160.470 shall be levied. The rate that may be levied under this section may produce revenue up to no more than thirty percent (30%) of the revenue guaranteed by the program to support education excellence in Kentucky plus the revenue produced by the tax authorized by this section. Revenue produced by this levy shall not be equalized with state funds. If a majority of those voting on the question favor the increased rate, the tax levying authority shall, when the next tax rate for the district is fixed, levy a rate not to exceed the rate authorized by the voters.
- (b) The election shall be held not less than fifteen (15) or more than thirty (30) days from the time the request of the board is filed with the county clerk, and reasonable notice of the election shall be given. The election shall be conducted and carried out in the school district in all respects as required by the general election laws and shall be held by the same officers as required by the general election laws. The expense of the election shall be borne by the school district.
- (3) For the 1966 tax year and for all subsequent years for levies which were approved prior to December 8, 1965, no district board of education shall levy a tax at a rate under the provisions of this section which exceeds the compensating tax rate as defined in KRS 132.010, except as provided in subsection (4) of this section and except that a rate which has been approved by the voters under this section but which was not levied by the

district board of education in 1965 may be levied after it has been reduced to the compensating tax rate as defined in KRS 132.010, and except that in any school district where the rate levied in 1965 was less than the maximum rate which had been approved by the voters, the compensating tax rate shall be computed and may be levied as though the maximum approved rate had been levied in 1965 and the amount of revenue which would have been produced from such maximum levy had been derived therefrom.

- (4) Notwithstanding the limitations contained in subsection (3) of this section, no tax rate shall be set lower than that necessary to provide such funds as are required to meet principal and interest payments on outstanding bonded indebtedness and payments of rentals in connection with any outstanding school revenue bonds issued under the provisions of KRS Chapter 162.
- (5) The chief state school officer shall certify the compensating tax rate to the levying authorities.

**Signed by the Governor March 20, 2009.**

## CHAPTER 54

### (HB 309)

AN ACT relating to motor vehicles.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 186A.520 is amended to read as follows:

- (1) Except as provided in KRS 186A.555, a salvage title shall be obtained by the owner of a motor vehicle that meets the following definition of a salvage vehicle:
  - (a) A vehicle which has been wrecked, destroyed, or damaged, to the extent that the total estimated or actual cost of parts and labor to rebuild or reconstruct the vehicle to its preaccident condition and for legal operation on the roads or highways, ***not including the cost of parts and labor to reinstall a deployed airbag system***, exceeds seventy-five percent (75%) of the retail value of the vehicle, as set forth in a current edition of the National Automobile Dealer's Association price guide.
  - (b) The value of repair parts for purposes of this definition shall be determined by using the current published retail cost of the parts equal in kind and quality to the parts to be replaced or the actual retail cost of the repair parts used in repair.
  - (c) The labor costs of repairs for purposes of this section shall be computed by using the hourly labor rate and time allocations which are reasonable and customary in the automobile repair industry in the community where the repairs are performed.
  - (d) ***Airbag reinstallation costs which are excluded from the seventy-five percent (75%) computation as set forth in paragraph (a) of this subsection shall be included by an insurer in the computation of the total physical damage estimate according to the terms and conditions of individual policies, provided that the total costs payable by an insurer do not exceed the total retail value of the vehicle.***
- (2) The owner or an authorized agent of a motor vehicle that meets the definition of a salvage vehicle as set forth in subsection (1) of this section shall, within fifteen (15) days from the receipt of all necessary paperwork required by this chapter, submit an application to the county clerk, on a form prescribed by the Department of Vehicle Regulation, for a salvage title, accompanied by a properly endorsed certificate of title and any lien satisfactions, if any appear, as may be required.
- (3) The county clerk shall retain a copy of each salvage title application received and shall forward the original and its supporting documents to the Department of Vehicle Regulation in a manner similar to that for handling of an application for a title.
- (4) The Department of Vehicle Regulation shall process the salvage title application in a manner similar to that used in processing a title application and the salvage title shall be delivered in a like manner of a title. Salvage titles shall be construed as proof of ownership of a vehicle in a state as to be unusable upon the highways of the Commonwealth. A vehicle shall not be issued a registration for highway use as long as a salvage title is in force.

- (5) The only time a vehicle with a salvage title may be operated upon the highways of the Commonwealth is when it is in route to or from an inspection by the certified inspector prior to obtaining a certificate of title after having been rebuilt as per KRS 186.115.

➔Section 2. KRS 186A.540 is amended to read as follows:

- (1) An individual, or a dealer required to be licensed pursuant to KRS Chapter 190, shall disclose all damages to a motor vehicle:
- (a) *For which the individual or the dealer has direct knowledge;*
  - (b) Which result in repairs or repair estimates that exceed one thousand dollars (\$1,000); and
  - (c) That occur while the motor vehicle is in *the individual's or the dealer's*~~his~~ possession and prior to delivery to a purchaser.
- (2) Disclosure *under this section* shall be in writing and shall require the purchaser's signature acknowledging the disclosure of damages.

➔Section 3. Section 1 of this Act takes effect October 1, 2009.

**Signed by the Governor March 20, 2009.**

## CHAPTER 55

### (HB 336)

AN ACT relating to dental hygienists.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 313.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Board" means the Kentucky Board of Dentistry.
- (2) Any person shall be regarded as "practicing dentistry" who, for a fee, salary or other reward paid, or to be paid either to himself, or to another person, performs or advertises to perform, dental operations of any kind, or who diagnoses or treats diseases or lesions of human teeth or jaws, or attempts to correct malpositions thereof, or who diagnoses or treats disorders, or deficiencies of the oral cavity and adjacent associated structures, or who takes impressions of the human teeth or jaws to be used directly in the fabrication of any intraoral appliance, or shall construct, supply, reproduce or repair any prosthetic denture, bridge, artificial restoration, appliance or other structure to be used or worn as a substitute for natural teeth, except upon the written laboratory procedure work order of a licensed dentist and constructed upon or by the use of casts or models made from an impression taken by a licensed dentist, or who shall advertise, offer, sell or deliver any such substitute or the services rendered in the construction, reproduction, supply or repair thereof to any person other than a licensed dentist, or who places or adjusts such substitute in the oral cavity of another, or who uses the words "dentist," "dental surgeon," the letters "D.D.S.," "D.M.D.," or other letters or title in connection with his name, which in any way represents him as being engaged in the practice of dentistry.
- (3) "Dental hygiene" shall mean the treatment of human teeth by scaling, polishing, planing and removing therefrom calcareous deposits~~[-]~~ and~~[-by]~~ removing accumulated accretion from beneath the free margin of the gums; ***dental hygiene assessment***~~[-]~~; and may also include other dental activities not specifically prohibited by this chapter or by regulation of the board provided, that nothing in KRS 313.260 to 313.350 shall be so construed as to affect the practice of medicine or dentistry nor to prevent students of a dental college or university from practicing dental hygiene under supervision of their instructors; and, provided further, that nothing in KRS 313.260 to 313.350 shall be construed to authorize any dental hygienist to perform any operation in a patient's mouth without supervision of a dentist.
- (4) "Dental laboratory" includes any person, firm or corporation other than a licensed dentist, who directly or through an agent or employee, by any means or method, in any way supplies or manufactures artificial substitutes for the natural teeth, other than those unfinished substitutes normally available through dental supply houses, or who furnishes, supplies, constructs or reproduces or repairs any prosthetic denture, bridge or

appliance to be worn in the human mouth or who performs or offers or undertakes to perform or accomplish dental laboratory technology.

- (5) "Dental laboratory technician" means any individual who performs or offers or undertakes to perform or accomplish dental laboratory technology and who is classified as such by regulations of the board adopted as provided in this chapter.
- (6) "Commercial dental laboratory" shall mean any dental laboratory as defined in subsection (4) of this section other than a laboratory of practicing dentists, accredited schools and nonprofit institutions for use only for their own patients.
- (7) "Commission" means the Dental Laboratory Advisory Commission.
- (8) "Laboratory association" means the Kentucky Dental Laboratory Association.

➔Section 2. KRS 313.310 is amended to read as follows:

- (1) No person shall practice dental hygiene nor hold himself out as a dental hygienist without a license issued by the board.
- (2) A licensed dental hygienist shall practice under the supervision, order, control, and full responsibility of a dentist licensed under this chapter and may practice:
  - (a) In a dental office, public or private school, health care facility, or government institution with a dentist on staff;
  - (b) ***Without the physical presence of a supervising dentist***~~except~~ as provided in administrative regulations promulgated pursuant to subsections (3), (4), and (5) of this section; ***or***
  - (c) ***Without a supervising dentist if providing screening services in accordance with subsection (9) of this section.***
- (3) A dental hygienist may provide, for not more than fifteen (15) consecutive full business days, dental hygiene services to a patient when the supervising dentist is not physically present at the location at which the services are provided if all the following requirements are met:
  - (a) The dental hygienist shall have at least two (2) years with a minimum of three thousand (3,000) hours of experience in the practice of dental hygiene;
  - (b) The dental hygienist shall have successfully completed a course approved by the board in the identification and prevention of potential medical emergencies with recertification in this course every two (2) years;
  - (c) The dental hygienist shall comply with written protocols for emergencies the supervising dentist establishes;
  - (d) The board shall promulgate administrative regulations to determine procedures the dental hygienist shall not be allowed to perform while the supervising dentist is absent from the work site; and
  - (e) The dental hygienist shall not examine or provide dental health services to a patient who has not been examined by the supervising dentist within the previous seven (7) months. The supervising dentist shall have completed and evaluated a medical and dental history of the patient and shall have placed a written order for treatment in the patient's file. The board shall promulgate administrative regulations to determine guidelines for the written order.
- (4)
  - (a) The license for each dental hygienist shall be continuously displayed in a conspicuous place in the office where the licensee practices.
  - (b) The supervising dentist shall evaluate and provide to the board written validation of an employed dental hygienist's skills.
  - (c) The supervising dentist shall establish a written office protocol clearly defining all guidelines, including one addressing medically compromised patients, when the treatment by the hygienist is permitted and when the patient needs to be seen exclusively by the dentist. The minimum requirements of the written protocol shall be promulgated in administrative regulations established by the board.

- (d) A patient shall be notified ~~three (3) business days~~ in advance of an appointment for dental hygiene services when the supervising dentist will be absent from the location. The patient shall be required to sign an informed consent form, prior to treatment by the hygienist, acknowledging the dentist's absence.
- (5) The dental hygienist may provide dental hygiene services to a patient when the supervising dentist is not physically present at the location at which the services are provided if the services are provided as part of a dental health program that is approved by the board and meets all of the following requirements:
- The program is operated through a school district board of education or the governing board of an educational service center; the board of health of a city or general health district or the authority having the duties of a board of health under KRS 212.245; a national, state, district, or local dental *or dental hygienist* association; or any other public or private entity recognized by the board;
  - The supervising dentist is employed by or is a volunteer for the entity through which the program is operated and through which the patients are referred; and
  - The services are performed after examination and diagnosis by the dentist and in accordance with the dentist's written treatment plan.
- (6) A dental hygienist may be employed by the supervising dentist or under contract with a dentist licensed under this chapter who is one (1) of the following:
- The employer of the supervising dentist;
  - A shareholder in a professional association formed under KRS 274.015 of which the supervising dentist is a shareholder;
  - A member or manager of a limited liability company formed under KRS 275.005 of which the supervising dentist is a member or manager;
  - A shareholder in a corporation formed under KRS Chapter 271B of which the supervising dentist is a shareholder;
  - A partner or employee of a partnership of which the supervising dentist is a partner or employee; or
  - A government entity that employs the dental hygienist to provide dental hygiene services in a public school in connection with other programs the government entity administers.
- (7) It shall be unlawful for a person or corporation to practice dental hygiene in a manner that is separate or independent from the dental practice of a supervising dentist or to establish or maintain an office or practice that is primarily devoted to the provision of dental hygiene services.
- (8) For purposes of determining whether or not a dental hygienist has met the experience requirements specified in subsection (3)(a) of this section, all experience that the dental hygienist obtained prior to July 15, 2002, shall be counted.
- (9) *A dental hygienist may provide screening services in any setting without the supervision of a dentist if:*
- The screening is conducted to fulfill the requirements of KRS 156.160(1)(i); and*
  - Patients are informed that the service being provided is a screening and that only a dentist is licensed to make a definitive diagnosis of the need for dental care.*

Signed by the Governor March 20, 2009.

## CHAPTER 56

### (HB 340)

AN ACT relating to assessments on motor vehicles.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 132.485 is amended to read as follows:

- (a) The registration of a motor vehicle with a county clerk in order to operate it or permit it to be operated upon the highways of the state shall be deemed consent by the registrant for the motor vehicle to be assessed by the property valuation administrator from a standard manual prescribed by the Department

of Revenue for valuing motor vehicles for assessment unless the registrant appears before the property valuation administrator to assess the vehicle. The standard value of motor vehicles shall be the average trade-in value prescribed by the valuation manual unless information is available that warrants any deviation from the standard value.

- (b) The registration of a recreational vehicle with the county clerk in order to operate it or permit it to be operated upon the highways shall be deemed consent by the registrant thereof for the recreational vehicle to be assessed by the property valuation administrator at a valuation determined from a standard manual prescribed by the Department of Revenue for valuing recreational vehicles for assessment unless the registrant appears in person before the property valuation administrator to assess the vehicle.
- (2) The registration of a motor vehicle on or before the date that the registration of the vehicle is required is prima facie evidence of ownership on January 1.
- (3) *When a motor vehicle is purchased in one (1) year, but registration takes place after January 1 of the following year through no fault of the owner, the Department of Revenue shall assess the motor vehicle and shall send notice of the assessment to the January 1 owner in accordance with KRS 186A.035. If the month of registration has passed for the current year, the assessment shall be due and payable if not protested to the department within forty-five (45) days from the date of the notice. Payments made after the due date shall carry the normal penalty and interest for motor vehicles.*
- (4) This section does not apply to motor vehicles or recreational vehicles owned and operated by public service companies, common carriers, or agencies of the state and federal governments.

**Signed by the Governor March 20, 2009.**

## CHAPTER 57

### (HB 372)

AN ACT relating to probation and parole.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 439.340 is amended to read as follows:

- (1) The board may release on parole persons confined in any adult state penal or correctional institution of Kentucky or sentenced felons incarcerated in county jails eligible for parole. All paroles shall issue upon order of the board duly adopted. As soon as practicable after his or her admission to an adult state penal or correctional institution or county jail if he or she is a sentenced felon, and at such intervals thereafter as it may determine, the Department of Corrections shall obtain all pertinent information regarding each prisoner, except those not eligible for parole. The information shall include his or her criminal record, his or her conduct, employment, and attitude in prison, and the reports of physical and mental examinations that have been made. The Department of Corrections shall furnish the circumstances of his or her offense and his or her previous social history to the institution and the board. The Department of Corrections shall prepare a report on any information it obtains. It shall be the duty of the Department of Corrections to supplement this report with any material the board may request and submit the report to the board.
- (2) Before granting the parole of any prisoner, the board shall consider the pertinent information regarding the prisoner and shall have him or her appear before it for interview and hearing. The board in its discretion may hold interviews and hearings for prisoners convicted of Class C felonies not included within the definition of "violent offender" in KRS 439.3401 and Class D felonies. The board in its discretion may request the parole board of another state confining prisoners pursuant to KRS 196.610 to interview eligible prisoners and make a parole recommendation to the board. A parole shall be ordered only for the best interest of society and not as an award of clemency, and it shall not be considered a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his or her proper employment or for his or her maintenance and care, and when the board believes he or she is able and willing to fulfill the obligations of a law abiding citizen. Notwithstanding any statute to the contrary, including KRS 440.330, when a prisoner is otherwise eligible for parole and the board has recommended parole for that prisoner for the reasons set forth in this subsection, the board may grant parole to any prisoner wanted as a fugitive by any other jurisdiction, and the prisoner shall be released to the detainer from that jurisdiction. Such parole shall not constitute a

relinquishment of jurisdiction over the prisoner, and the board in all cases expressly reserves the right to return the prisoner to confinement in a correctional institution of the Commonwealth if the prisoner violates the terms of his or her parole.

- (3) (a) *A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years who is confined to a state penal institution or county jail shall have his or her case reviewed by the Parole Board after serving fifteen percent (15%) or two (2) months of the original sentence, whichever is longer.*

(b) *Except as provided in paragraph (a) of this subsection, the board shall adopt administrative regulations with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings and all other matters that come before it, or conditions to be imposed upon parolees. Regulations governing the eligibility of prisoners for parole shall be in accordance with professionally accepted ideas of correction and reform and may utilize in part objective, performance-based criteria; however, nothing herein contained shall preclude the board from utilizing its present regulations in conjunction with other factors involved that would relate to the inmate's needs and the safety of the public.*
- (4) The board shall insure that sentenced felons confined in county jails are considered for parole within thirty (30) days of their parole eligibility date and the Department of Corrections shall provide the necessary assistance and information to the board in order for it to conduct timely parole reviews.
- (5) In addition to or in conjunction with each hearing conducted under subsection (2) of this section for any prisoner convicted of a Class A, B, or C felony and prior to the granting of a parole to any such prisoner, the parole board shall conduct a hearing of which the following persons shall receive not less than forty-five (45) nor more than ninety (90) days' notice: the Commonwealth's attorney who shall notify the sheriff of every county and the chief of police of every city and county in which the prisoner committed any Class A, B, or C felony for which he or she is imprisoned, and all identified victims of the crimes or the next of kin of any victim who is deceased. Notice to the Commonwealth's attorney shall be by mail, fax, or electronic means at the discretion of the board, and shall be in a manner that ensures receipt at the Commonwealth attorney's business office. Notices received by chiefs of police and sheriffs shall be posted in a conspicuous location where police employed by the department may see it. Notices shall be posted in a manner and at a time that will allow officers to make comment thereon to the Parole Board. Notice to victims or their next of kin shall be made, for prisoners incarcerated prior to July 15, 1986, by mail, fax, or electronic means at the discretion of the board, and shall be in a manner that ensures receipt by the Commonwealth's attorney, who shall forward the notice promptly to the victims or their next of kin at their last known address. For prisoners incarcerated on or after July 15, 1986, notice to the victims or their next of kin shall be by mail from the Parole Board to their last known address as provided by the Commonwealth's attorney to the Parole Board at the time of incarceration of the prisoner. Notice to the victim or the next of kin of subsequent considerations for parole after the initial consideration shall not be sent if the victim or the next of kin gives notice to the board that he or she no longer wants to receive such notices. The notice shall include the time, date, and place of the hearing provided for in this subsection, and the name and address of a person to write if the recipient of the notice desires to attend the hearing or to submit written comments.
- (6) Persons receiving notice as provided for in subsection (5) of this section may submit comments, in person or in writing, to the board upon all issues relating to the parole of the prisoner. The board shall read and consider all comments prior to making its parole decision, if they are received by the board not less than seven (7) days before the date for the hearing. The board shall retain all comments in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decisions affecting the prisoner. In addition to officers listed in subsection (5) of this section, the crime victims or the next of kin of any victim who is deceased or who is disabled and cannot attend the hearing or the parent or legal guardian of any victim who is a minor may attend the hearing provided for in subsection (5) of this section and present oral and written comments upon all issues relating to the parole of the prisoner, if they have advised the board, in writing received by the board not less than seven (7) days prior to the date set for the hearing, of their intention to attend the hearing. The board shall receive and consider all comments, shall make a record of them which it shall retain in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decision affecting the prisoner. Persons appearing before the Parole Board pursuant to this subsection may elect to make their presentations outside of the presence of the prisoner.
- (7) Victims of Class D felonies may submit comments in person or in writing to the board upon all issues relating to the parole of a prisoner.

- (8) Any hearing provided for in subsections (5), (6), and (7) of this section shall be open to the public unless the persons having a right to appear before the board as specified in those subsections request closure of hearing for reasons of personal safety, in which event the hearing shall be closed. The time, date, and location of closed hearings shall not be disclosed to the public.
- (9) Except as specifically set forth in this section, nothing in this section shall be deemed to expand or abridge any existing rights of persons to contact and communicate with the Parole Board or any of its members, agents, or employees.
- (10) The unintentional failure by the Parole Board, sheriff, chief of police, or any of its members, agents, or employees or by a Commonwealth's attorney or any of his or her agents or employees to comply with any of the provisions of subsections (5), (6), and (8) of this section shall not affect the validity of any parole decision or give rise to any right or cause of action by the crime victim, the prisoner, or any other person.
- (11) No eligible sexual offender within the meaning of KRS 197.400 to 197.440 shall be granted parole unless he or she has successfully completed the Sexual Offender Treatment Program.
- (12) Any prisoner who is granted parole after completion of the Sexual Offender Treatment Program shall be required, as a condition of his or her parole, to participate in regular treatment in a mental health program approved or operated by the Department of Corrections.
- (13) When an order for parole is issued, it shall recite the conditions thereof.

➔Section 2. KRS 439.344 is amended to read as follows:

The period of time spent on parole shall ~~not~~ count as a part of the prisoner's ~~maximum~~ sentence, except *when a parolee is:*

- (1) *Returned to prison as a parole violator for a new felony conviction;*
- (2) *Classified as a violent offender pursuant to KRS 439.3401; or*
- (3) *A registered sex offender pursuant to KRS 17.500 to 17.580* ~~[in determining parolee's eligibility for a final discharge from parole as set out in KRS 439.354].~~

➔Section 3. KRS 439.354 is amended to read as follows:

- (1) *Except as provided in subsection (2) of this section,* when any paroled prisoner has performed the obligations of his *or her* parole during his *or her* period of active parole supervision the board may, at the termination of such period to be determined by the board, issue a final discharge from parole to the prisoner. Unless ordered earlier by the board, a final discharge shall be issued when the prisoner has been out of prison on parole a sufficient period of time to have been eligible for discharge from prison by *minimum* ~~maximum~~ expiration of sentence had he *or she* not been paroled, provided before this date he *or she* had not absconded from parole supervision or that a warrant for parole violation had not been issued by the board.
- (2) *When any paroled prisoner classified as a violent offender pursuant to KRS 439.3401, or registered as a sex offender pursuant to KRS 17.500 to 17.580, has performed the obligations of his or her parole, the board shall issue a final discharge from parole to the prisoner when the prisoner has been out of prison on parole a sufficient period of time to have been eligible for discharge from prison by maximum expiration of sentence had he or she not been paroled, provided before this date he or she had not absconded from parole supervision or that a warrant for parole violation had not been issued by the board.*

➔Section 4. KRS 532.050 is amended to read as follows:

- (1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody ~~and is ineligible for probation or conditional discharge~~.
- (2) The report shall be prepared and presented by a probation officer and shall include an analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, personal habits, and any other matters that the court directs to be included.

- (3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.
- (4) If the defendant has been convicted of a sex crime, as defined in KRS 17.500, prior to determining the sentence or prior to final sentencing for youthful offenders, the court shall order a comprehensive sex offender presentence evaluation of the defendant to be conducted by an approved provider, as defined in KRS 17.500, the Department of Corrections, or the Department of Juvenile Justice if the defendant is a youthful offender. The comprehensive sex offender presentence evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment and shall be considered by the court in determining the appropriate sentence. A copy of the comprehensive sex offender presentence evaluation shall be furnished to the court, the Commonwealth's attorney, and to counsel for the defendant. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the comprehensive sex offender presentence evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any comprehensive sex offender presentence evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.
- (5) The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based and correctional-institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.
- (6) Before imposing sentence, the court shall advise the defendant or his *or her* counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

➔Section 5. The provisions of Sections 1, 2, and 3 of this Act shall control over any contrary, more expansive, or more permissive provision of 2008 Ky. Acts ch. 127.

**Signed by the Governor March 20, 2009.**

## CHAPTER 58

### (HB 401)

AN ACT relating to real estate brokerage.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

- ➔Section 1. KRS 324.045 is amended to read as follows:
- (1) Licenses shall be granted only to persons who are trustworthy and competent to transact the business of a broker or sales associate in a manner to safeguard the interest of the public, and only after satisfactory proof of qualifications has been presented to the commission.
  - (2) In addition to proof of honesty, truthfulness, and good reputation of any applicant for a license, each applicant shall pass a written examination conducted by the commission, or its authorized representative. The examination shall be of the scope and wording sufficient in the judgment of the commission to establish the competency of the applicant to act as a broker or sales associate in a manner to protect the interests of the public. However, an examination shall not be required for the renewal of any present or future license, unless the license has been revoked, suspended, or is allowed to expire without renewal for a period of more than one (1) year.
  - (3) The commission shall hold examinations at the times and places it determines, and an examination fee shall be collected from each applicant to defray the expenses of holding the examinations.

- (4) The commission may, by the promulgation of administrative regulations, require all licensure applicants to submit to a criminal record check for which the applicant shall be responsible for the payment of any fees incurred.
- (5) ***Applicants shall be subject to a national criminal history check through the Federal Bureau of Investigation. The applicant shall request the criminal history check and shall provide the applicant's fingerprints to either the Federal Bureau of Investigation or the Kentucky State Police for submission to the Federal Bureau of Investigation to search for information regarding the applicant in the National Crime Information Center or its successor entity. The results of the criminal history check shall be sent to the commission, and shall be sent to the applicant at the applicant's request. The applicant shall:***
- (a) ***Authorize release of the results of the criminal history check to the commission;***
  - (b) ***Pay the actual cost of the fingerprinting and criminal history check, if any;***
  - (c) ***Complete the criminal history check within the ninety (90) calendar days prior to the date the license application is received by the commission; and***
  - (d) ***Complete and return to the commission within one hundred twenty (120) days a signed affidavit verifying that there is nothing on record to prohibit the applicant from licensure.***

➔Section 2. KRS 324.111 is amended to read as follows:

- (1) A principal broker shall maintain an escrow account or accounts, separate from the individual or office account, in which all contract deposits and money belonging to others shall be deposited without unreasonable delay. The escrow accounts shall be maintained within the State of Kentucky and shall be identified to the commission in writing. ***Each principal broker shall advise the commission, in writing, if any overdraft occurs in the escrow account for any reason other than service charges instituted by the bank, and which is not corrected within seventy-two (72) hours of the broker receiving notice.***
- (2) The broker may place the deposit in an interest-bearing account or instrument. The interest earned shall accrue to the person agreed to in writing by all parties.
- (3) No checks shall be drawn against uncollected deposits in the escrow account.
- (4) None of the contract deposits shall be withdrawn until the contract has been terminated by performance, by agreement in writing between all parties, or by order of a court of competent jurisdiction, except as permitted in subsection (6) of this section.
- (5) Upon licensure and each renewal, the principal broker shall sign a permit giving the commission the permission to audit all his ***or her*** escrow accounts.
- (6) Upon being notified that one (1) or more parties to a contract intends not to perform, ~~the broker may release the contract deposit as provided in the contract or if no provision is made in the contract,~~ the broker may initiate the release process. The release process shall require the broker to notify all parties at their last known address by certified mail that the contract deposit shall be distributed to the parties specified in the letter unless all parties enter into a written mutual release, or unless one (1) or more of the parties initiate litigation within sixty (60) days of the mailing date of the certified letter. If neither buyer nor seller initiates litigation or enters into a written release within sixty (60) days of the mailing date of the certified letter, the broker may release the deposit to the party identified in the certified letter without penalty under this section and without civil liability in the courts of the Commonwealth of Kentucky.
- (7) All principal brokers whose companies engage in property management shall maintain property management accounts separate from all other accounts or specifically indicate in all escrow records if funds are property management funds.
- (8) A broker or sales associate who owns rental property shall not be required to use the principal broker's management account for the rental property, unless required by the principal broker.
- (9) ***If any licensee is alleged to have committed an escrow account violation that warrants emergency action, the commission may conduct an emergency hearing as authorized by subsection (1)(b) of Section 5 of this Act.***

➔Section 3. KRS 324.117 is amended to read as follows:

- (1) No real estate advertising shall be intentionally false, misleading, or deceptive.
- (2) The name of a deceased broker may remain a part of the firm name.
- (3) **A sales**~~[An]~~ associate may have his or her name in the firm name after two (2) years' experience with the firm, averaging at least twenty (20) hours per week for twenty-four (24) months.
- (4) Whenever any real property is listed, a licensee shall include the name of the real estate company listed on the licensee's real estate license or the name of the principal broker with whom the licensee is affiliated in all advertisements of the listed property, regardless of who places the advertisement, unless he or she is selling, renting, leasing, or otherwise dealing in his or her own property. If listed property is advertised by a customer or client of a listing licensee, the licensee shall, at a minimum, provide the customer or client with written notification of the requirements of this section. The licensee shall keep in his or her files a copy of the notification and any other documentation that is generated by the licensee as proof of his or her compliance with this section.
- (5) The commission shall, by the promulgation of administrative regulations, define false, misleading, or deceptive advertising.
- (6) The commission shall, by the promulgation of administrative regulations, define the manner in which licensees may utilize any Internet electronic communication for advertising or marketing.

➔Section 4. KRS 324.141 is amended to read as follows:

- (1) (a) ***An individual who holds an active real estate license issued by another jurisdiction within the United States may apply for a Kentucky license by first:***
  1. ***Completing the application forms;***
  2. ***Passing the state law portion of the licensing examination; and***
  3. ***Fulfilling all other pre-license qualifications as outlined in this chapter.***
- (b) ***The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish the procedures for implementing paragraph (a) of this subsection***~~[If the commission enters into an agreement of reciprocity with the appropriate state or territory, and upon payment of the established application fees, any person who holds a real estate license in good standing issued by any state or territory which has licensing and educational standards deemed by the commission to be sufficient for minimal competence as a real estate licensee may be licensed without examination if the state or territory extends similar reciprocity to licensees of this state].~~
- (2) ***All individuals who have held a real estate license in another jurisdiction, whether the license is currently active or canceled, shall be required to furnish, as part of his or her application for a Kentucky license, a certification of good standing, issued by the jurisdiction. The document shall include the individual's license history and any disciplinary information available from that jurisdiction.***
- (3) Every nonresident applicant shall file an irrevocable consent stating that legal actions may be commenced against the applicant in the proper court of any county of this state in which a cause of action may arise in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state on the commission, the consent stipulating and agreeing that service of process or pleadings on the commission shall be taken and held in all courts to be as valid and binding as if service had been made upon the applicant in the State of Kentucky. Any process or pleadings served upon the commission shall be by duplicate copies, one (1) of which shall be filed in the office of the commission and the other immediately forwarded by certified mail, return receipt requested, to the main office of the applicant against which the process or pleadings are directed.

➔Section 5. KRS 324.150 is amended to read as follows:

- (1) (a) The commission or its staff may on its own initiative investigate the actions of any licensee or any person who acts in that capacity. On the verified written complaint of any person, the commission shall investigate the actions of any person who assumes to act in that capacity, if the complaint, together with any evidence presented in connection with it, alleges a prima facie case that a violation set out in KRS 324.160 has been committed. After the investigation, the commission may order a hearing and, in appropriate cases, take disciplinary action against any licensee who is found in violation of KRS 324.160.

**(b) The commission may conduct an emergency hearing when alleged escrow account violations warrant emergency action. The commission shall promulgate administrative regulations to describe the specific circumstances and allegations that authorize emergency action. The emergency hearing shall be conducted in accordance with KRS Chapter 13B, as it relates to emergency orders and emergency hearings.**

- (2) To investigate allegations of practices violating the provisions of this chapter, the commission may:
- (a) Issue subpoenas to compel attendance of witnesses and the production of books, papers, documents, or other evidence;
  - (b) Administer oaths;
  - (c) Review evidence;
  - (d) Enter the office or branch office of any principal broker for the purpose of inspecting all documents required by the commission to be maintained in the principal broker's office or branch office which relate to the allegations of practices violating the provisions of this chapter;
  - (e) Examine witnesses; and
  - (f) Pay appropriate witness fees.

➔Section 6. KRS 324.151 is amended to read as follows:

- (1) All complaints against licensees shall be submitted to the commission on forms furnished by the commission. The complaint shall state facts which, if true, would constitute a prima facie case that the licensee has violated the provisions of KRS 324.160. If the complaint does not constitute a prima facie case, the commission shall allow the complainant ten (10) days to revise and supplement the complaint in order to cure any defect. If the complainant fails to respond within ten (10) days or if the revised and supplemented complaint does not constitute a prima facie case that the licensee has violated the provisions of KRS 324.160, the commission shall dismiss the matter without requiring the licensee to file or serve a response.
- (2) If the complaint constitutes a prima facie case that a licensee has violated the provisions of KRS 324.160, a copy of the complaint, exhibits attached thereto, and any subsequent pleadings, shall be served on the licensee, by the commission, at the licensee's last known address and shall show certification that there has been service by writing to the last known address.
- (3) If the commission serves the complaint upon the licensee, the licensee shall file with the commission an answer to the complaint, properly notarized, on forms secured from commission offices. The answer shall be returned to the commission within twenty (20) days. The licensee shall deliver to the complainant at his *or her* last known address a copy of the answer, exhibits attached thereto, and any subsequent pleadings. All further pleadings in the matter filed with the commission by either party shall show that a copy has been furnished to the opposing party or parties.
- (4) ***If any licensee is alleged to have committed an escrow account violation that warrants emergency action, the commission may conduct an emergency hearing as authorized by subsection (1)(b) of Section 5 of this Act.***

➔Section 7. KRS 324.160 is amended to read as follows:

- (1) The commission may order any or all of the following sanctions for violation of subsections (4) to (7) of this section:
  - (a) Suspension of any license;
  - (b) Revocation of any license;
  - (c) Levy of fines not to exceed one thousand dollars (\$1,000);
  - (d) Placing of any licensee on probation for a period of up to twelve (12) months;
  - (e) Requiring successful completion of academic credit hours or additional credit hours in real estate courses from an accredited institution or approved real estate school; or
  - (f) Issuing a formal or informal reprimand.

- (2) A canceled license may be renewed if the licensee pays all necessary fees and meets all other active licensure requirements within one (1) year of the cancellation date. No licensee whose license is canceled shall engage in real estate brokerage during the period of cancellation or receive any compensation for real estate brokerage unless the compensation was earned prior to the effective date of the cancellation.
- (3) No licensee whose license is suspended shall engage in real estate brokerage or receive any compensation for real estate brokerage unless the compensation was earned prior to the suspension period.
- (4) The commission shall impose sanctions set out in subsection (1) of this section against a licensee for:
- (a) Obtaining a license through false or fraudulent representation;
  - (b) Making any substantial misrepresentation or failing to disclose known defects which substantially affect the value of the property;
  - (c) Making any false promises of a character likely to influence, persuade, or induce;
  - (d) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising or otherwise;
  - (e) Acting for more than one (1) party in a transaction without the knowledge of all parties for whom the licensee acts;
    1. A real estate licensee shall not directly or indirectly buy property listed with him or her or with the broker with whom the licensee is affiliated, nor acquire an interest therein, without first indicating in writing on the offer to purchase his or her status as a licensee;
    2. Before a licensee becomes a party to a contract to purchase real property, the licensee shall disclose his or her status as a licensee to all parties to the transaction, in writing, on the sales contract or on the offer to purchase;
    3. Before a licensee sells, or receives compensation for property in which the licensee owns an interest, the licensee shall disclose, in writing, any interest in the property to all parties to the transaction;
  - (f) Accepting valuable consideration for the performance of any of the acts specified in this chapter, from any person, except from his or her principal broker in accordance with a compensation agreement between them. When acting as an agent in the management of property, a real estate licensee shall not accept any commission, rebate, or profit on expenditures made for a client without the full knowledge and consent of the client;
  - (g) Representing or attempting to represent a broker other than a principal broker, without the express knowledge and consent of the principal broker with whom the licensee is affiliated;
  - (h) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession. When acting as a property manager, the licensee shall render an accounting and remit all moneys to his or her client strictly in accordance with the contract of employment;
  - (i) Paying valuable consideration to any person for services performed in violation of this chapter;
  - (j) Entering a plea of guilty or an "Alford" plea to, or having been found guilty of, or having been convicted of, a felony or of a misdemeanor involving sexual misconduct the time for appeal has lapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following the conviction suspending the imposition of sentence;
  - (k) Failing to report a conviction, plea of guilty, or an "Alford" plea to a felony or a misdemeanor involving sexual misconduct to the commission;
  - (l) Soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery, contest, or deceptive practice;
  - (m) ~~{Offering prizes for the purpose of influencing a purchaser or prospective purchaser of real estate;~~
  - ~~(n) — }Acting in the dual capacity of licensee and undisclosed principal in any real estate transaction;~~
  - ~~(n){(o)}~~ Guaranteeing, authorizing, or permitting a person to guarantee that future profits shall result from a resale of real property;

- (~~o~~)(~~p~~) Negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property, or attempting to obtain a brokerage agreement with a consumer knowing that the consumer had a written outstanding contract granting exclusive agency with another real estate broker;
- (~~p~~)(~~q~~) Publishing or circulating an unjustified or unwarranted threat of legal proceedings or other action;
- (~~q~~)(~~r~~) Failing or refusing on demand to furnish copies of a document pertaining to a transaction dealing with real estate to a person whose signature is affixed to the document;
- (~~r~~)(~~s~~) Failing, within a reasonable time, to provide information requested by the commission as a result of a formal or informal complaint to the commission which may indicate a violation of this chapter;
- (~~s~~)(~~t~~) Paying valuable consideration to any person for the name of potential sellers or buyers, except as otherwise provided in KRS 324.020(4);
- (~~t~~)(~~u~~) Violating any of the provisions in this chapter or any lawful order, rule, or administrative regulation made or issued under the provisions of this chapter;
- (~~u~~)(~~v~~) Any other conduct that constitutes improper, fraudulent, or dishonest dealing; or
- (~~v~~)(~~w~~) Gross negligence.

- (5) Any conduct constituting a violation of the Federal Fair Housing Act, including use of scare tactics or blockbusting, shall be considered improper conduct as referred to in subsection (4)(~~u~~)(~~v~~) of this section.
- (6) No unlawful act or violation of any provision of this chapter by any affiliated licensee of the principal broker shall be cause for holding the principal broker primarily liable, unless the broker has knowledge of the unlawful violation and did not prevent it. The principal broker and his or her designated manager, if any, shall exercise adequate supervision over the activities of licensed affiliates and all company employees to ensure that violations of this chapter do not occur. The failure of a broker or his *or her* designated manager to exercise adequate supervision of the licensed affiliates shall constitute a violation of this chapter.
- (7) The practice of obtaining, negotiating, or attempting to negotiate "net listings" shall be considered improper dealing.

➔Section 8. KRS 324.165 is amended to read as follows:

- (1) No person shall:
  - (a) Solicit or request a referral fee from a real estate licensee unless that person introduced the business to the real estate licensee from whom the referral fee is sought and a contractual referral fee relationship exists between the person and the real estate licensee; or
  - (b) Threaten to reduce or withhold employee relocation benefits or to take other action adverse to the interests of a client of a real estate licensee because of an agency relationship.
- (2) No real estate licensee, relocation firm, or firm with a corporate relocation policy or benefits, or anyone on behalf of any licensee or firm, shall counsel a client of another real estate licensee regarding the manner in which the client may terminate or amend an existing listing contract, buyer agency agreement, or other agency relationship. Communicating corporate relocation policy or benefits to a transferring employee shall not be considered a violation of this section, as long as the communication does not involve advice or encouragement regarding the manner in which the client may terminate or amend an existing agency relationship.
- (3) Violation of this section by a broker or sales associate shall be considered improper conduct as referred to in KRS 324.160(4)(~~u~~)(~~v~~). Violation of this section by unlicensed persons shall be subject to the penalties in KRS 324.990.

➔Section 9. KRS 324.170 is amended to read as follows:

- (1) The commission shall, before denying an application for license or before ordering any disciplinary action against a licensee, order a hearing. The hearing shall be conducted in accordance with the provisions of KRS Chapter 13B. If the applicant or licensee is a sales associate, the commission shall also notify the principal broker of the hearing by mailing notice by certified mail, return receipt requested, to the broker's last known

business address. The commission shall order the presence of the principal broker or his *or her* designated representative at the hearing.

- (2) All hearings shall be conducted by a quorum of the commission or by a hearing officer appointed by the commission. Hearing officers shall not order any disciplinary action against a licensee. The function of hearing officers appointed to conduct hearings shall be to preside at the hearing and to prepare a recommended order to be submitted to the commission.
- (3) ***If any licensee is alleged to have committed an escrow account violation that warrants emergency action, the commission may conduct an emergency hearing as authorized by subsection (1)(b) of Section 5 of this Act.***

➔Section 10. KRS 324.310 is amended to read as follows:

- (1) If any sales associate is discharged or terminates his *or her* association with the principal broker, it shall be the duty of the broker to immediately deliver or mail to the commission the sales associate's license ***in a manner that complies with Section 11 of this Act, along*** with the release statement signed by the principal broker. The broker shall, at the time of mailing the sales associate's license to the commission, address a communication to the last known residence address of the sales associate, which shall advise the sales associate that his *or her* license has been delivered or mailed to the commission. A copy of the communication to the sales associate shall accompany the license when mailed or delivered to the commission. It shall be unlawful for any sales associate to perform any of the acts contemplated by this chapter either directly or indirectly under authority of ***the sales associate's***~~his~~ license from and after the date of receipt of the license from the broker by the commission.
- (2) A licensee may place his *or her* license in escrow with the commission provided that:
  - (a) The licensee does not engage in any real estate activity for others during the term of escrow of the license; and
  - (b) The licensee pays the annual license renewal fees for each year the license is in escrow.
- (3) At the request of the licensee, upon the meeting of requirements applicable to active licensees and completion of all continuing education requirements, a license placed in escrow shall be automatically converted to an active license upon payment of the established change fee.

➔Section 11. KRS 324.312 is amended to read as follows:

- (1) A principal broker shall return an associate's license to the commission ***immediately***:
  - (a) ***Upon the written termination of the association between the broker and the associate; or***
  - (b) ***At any time upon the commission's***~~upon~~ request.
- (2) ***If a principal broker***~~that~~ fails to return a license to the commission ***as required by subsection (1) of this section within five (5) business days, the commission shall consider the license as released, and the principal broker***~~upon request~~ shall be in violation of KRS 324.160(4)(u)~~(v)~~.

➔Section 12. KRS 324.420 is amended to read as follows:

- (1) An aggrieved party may commence an administrative action which may result in collection from the recovery fund by first filing a complaint with the commission on a form prepared by the commission. The complaint shall constitute a prima facie case that a licensee is in violation of KRS 324.160 and is subject to the same conditions set forth in KRS 324.150. If the complaint constitutes a prima facie case and the matter is not settled, the commission shall hold a hearing pursuant to the requirements set forth in the provisions of this chapter and KRS Chapter 13B to determine if a violation of this chapter has in fact occurred. If a violation of fraud is so found, the commission shall determine if the violation resulted in damages to complainant and in what amount. If damages cannot be accurately determined, then the amount of damages shall be determined by a Circuit Court in the county where the violation took place. In the event the question of damages is referred to the Circuit Court, the decision of the commission will not be final and appealable until the question of damages is certifiable.
- (2) Upon final order by the commission or upon certification to the commission by the Circuit Court on the issue of damages, and after the licensee has refused to pay the claim within a period of twenty (20) days of entry of a final order, the aggrieved party or parties shall be paid the amount or amounts by the commission from the recovery fund.

- (3) The license of the licensee against whom the claim was made by the aggrieved party shall be suspended or may be permanently revoked until such time as the licensee has reimbursed the recovery fund in full for all amounts paid, plus interest at the rate of ten percent (10%) per annum.
- (4) Any party aggrieved by a final order of the commission may appeal to the Circuit Court where the licensee has his principal place of business or where the applicant resides in accordance with KRS Chapter 13B.
- (5) Upon the final order of the court, and after the commission has paid from the real estate education, research, and recovery fund any sum to the aggrieved party, the commission shall be subrogated to all of the rights of the aggrieved party to the extent of the payment. The aggrieved party shall to the extent of the payment assign his right, title and interest in the judgment to the commission. After such assignment, the commission may challenge in bankruptcy court any attempt by a former licensee to discharge the debt, if proper notice is given. Any funds recovered by the commission shall be deposited in the real estate education, research, and recovery fund.
- (6) No aggrieved party shall be entitled to recover compensation from the real estate education, research, and recovery fund unless the action against the licensee is commenced within two (2) years from actual knowledge of the cause of action or from the time when circumstances should reasonably have put the aggrieved party on notice of the cause of action.
- (7) ***An aggrieved party shall not be entitled to recover compensation from the real estate education, research, and recovery fund, unless the compensation is for the actual financial harm suffered by the aggrieved party, and this financial harm is specifically and directly related to the property.***
- (8) For purposes of this section, an "aggrieved party" shall mean either:
  - (a) A member of the consumer public who stands in a direct relationship to the licensee, i.e., one who demonstrates an interest in purchasing, leasing, renting, or otherwise securing an interest in real estate through a licensee and who believes that the licensee is in violation of the provisions of this chapter; or
  - (b) A member of the consumer public who directly engages the services of a licensee for purposes of selling, leasing, renting, or otherwise dealing in his or her own property.
- ~~(9)~~ If at any time the money on deposit in the real estate education, research and recovery fund is insufficient to satisfy any duly-authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the real estate education, research, and recovery fund, satisfy such unpaid claim or portions thereof, in the order that such claims or portions were originally filed, plus accumulated interest at the rate of ten percent (10%) per annum.
- ~~(10)~~ Any funds in excess of the four hundred thousand dollar (\$400,000) level which are not being currently used, may be invested and reinvested as set forth in subsection (2) of KRS 324.410.

➔Section 13. KRS 324.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Real estate brokerage" means a single, multiple, or continuing act of dealing in time shares or options, selling or offering for sale, buying or offering to buy, negotiating the purchase, sale, or exchange of real estate, engaging in property management, leasing or offering to lease, renting or offering for rent, or referring or offering to refer for the purpose of securing prospects, any real estate or the improvements thereon for others for a fee, compensation, or other valuable consideration;
- (2) "Commission" means the Kentucky Real Estate Commission;
- (3) "Net listing" means a listing agreement that provides for a stipulated net price to the owner and the excess over the stipulated net price to be received by the licensee as the fee compensation or other valuable consideration;
- (4) "Principal broker" means a person licensed as a broker under KRS 324.046 who, in addition to performing acts of real estate brokerage or transactions comprehended by that definition, is the single broker responsible for the operation of the company with which he or she is associated;
- (5) "Real estate" means real estate in its ordinary meaning and includes timeshares, options, leaseholds, and other interests less than leaseholds;

- (6) "Sales associate" means any person licensed in accordance with KRS 324.046(2) that is affiliated with a Kentucky-licensed principal broker and who, when engaging in real estate brokerage, does so under the supervision of the principal broker;
- (7) "Approved real estate school" means:
- (a) A school that has been given a certificate of approval by the State Board for Proprietary Education or other regulatory bodies that exercise jurisdiction over accreditation and approval and the Kentucky Real Estate Commission. The school shall also be currently in good standing with both the State Board for Proprietary Education or other regulatory bodies that exercise jurisdiction over accreditation and approval and the commission; or
  - (b) A National Association of Realtors recognized program which has been reviewed by the Kentucky Real Estate Commission and deemed an approved real estate school;
- (8) "Accredited institution" means a college or university accredited by appropriately recognized educational associations or chartered and licensed in Kentucky that grants credits toward a program for either an associate, baccalaureate, graduate, or professional degree;
- (9) "Property management" means the overall management of real property for others for a fee, compensation, or other valuable consideration, and may include the marketing of property, the leasing of property, collecting rental payments on the property, payment of notes, mortgages, and other debts on the property, coordinating maintenance for the property, remitting funds and accounting statements to the owner, and other activities that the commission may determine by administrative regulation;
- (10) "Broker" means any person who is licensed under KRS 324.046(1) and performs acts of real estate brokerage;
- (11) ***"Designated manager" means a licensed sales associate or broker who manages a main or branch office for the principal broker, at the principal broker's direction, and has managing authority over the activities of the sales associates at that office:***
- (12) "Regular employee" means an employee who works for an employer, whose total compensation is subject to withholding of federal and state taxes and FICA payments, and who receives from the employer a fixed salary governed by federal wage guidelines that is not affected by specific real estate transactions;
- ~~(13)~~~~(12)~~ "Referral fee" means consideration of any kind paid or demanded for the referral of a potential or actual buyer, seller, lessor, or lessee of real estate;
- ~~(14)~~~~(13)~~ "Designated agency" means a form of agency relationship that exists when a principal broker, in accordance with KRS 324.121, identifies different licensees in the same real estate brokerage firm to separately represent more than one (1) party in the same real estate transaction;
- ~~(15)~~~~(14)~~ "Affiliation" means the relationship agreed upon between a licensee and a principal broker and reported to the commission, where the licensee places his ***or her*** license with the principal broker for supervision of the licensee's real estate brokerage activity;
- ~~(16)~~~~(15)~~ "Canceled" means the status of a license when a licensee fails to renew a license, writes the commission a check for fees that is not honored, fails to re-affiliate with a principal broker, or fails to complete requirements for continuing education;
- ~~(17)~~~~(16)~~ "Suspended" means the status of a license when disciplinary action has been ordered against a licensee that prohibits the brokerage of real estate for a specific period of time; and
- ~~(18)~~~~(17)~~ "Revoked" means the status of a license when disciplinary action has been ordered that removes the licensee's legal authority to broker real estate for a minimum of five (5) years.

➔Section 14. KRS 324.121 is amended to read as follows:

- (1) A principal broker may designate one (1) or more affiliated licensees to act as agent for a seller or lessor, to the exclusion of all other licensees affiliated with the principal broker. A principal broker may designate one (1) or more affiliated licensees to act as agent for a buyer or lessee, or prospective buyer or lessee to the exclusion of all other licensees affiliated with the principal broker. The designation procedure shall be made in writing and communicated to all licensees affiliated with the principal broker. The designated agent shall inform and obtain the consent of the buyer or lessee, or prospective buyer or lessee to the designation. The designated agent shall inform and obtain the consent of the seller or lessor to the designation. The principal broker shall not designate himself or herself as a designated agent.

- (2) If a principal broker designates one (1) or more licensees to represent the seller and one (1) or more other licensees to represent the buyer or the prospective buyer in the same transaction, only the principal broker *or a designated manager working under the principal broker's direction* shall be deemed to be a dual agent representing the seller and buyer in a limited fiduciary capacity. As a dual agent, the principal broker *or designated manager* shall keep confidential information relating to either party in an individual file that shall be maintained and accessed by the principal broker *or designated manager* only. As a dual agent, the principal broker *or designated manager* shall not disclose to either party confidential information learned relative to the other party. Except as set forth in subsection (3) of this section, this designation shall not affect the principal broker's *or designated manager's* agency relationships in cooperative sales between consumers separately represented by nonaffiliated principal brokers *or designated manager*.
- (3) No exchange of information or knowledge between or among consumers, whether the seller, buyer, lessor, or lessee, and the principal broker, *the designated manager*, the firm, or the licensees shall be imputed as a matter of law in any real estate transaction.
- (4) Nothing in this section shall prevent a real estate brokerage firm or licensee from entering into a dual agency relationship with consumers in a real estate transaction.

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 324 IS CREATED TO READ AS FOLLOWS:

*Nothing in this chapter or the administrative regulations promulgated under the authority of this chapter shall extend the jurisdiction of the Kentucky Real Estate Commission to community association managers and the management or business activities of not-for-profit community associations, which includes townhouse, condominium, homeowner, or neighborhood associations.*

Signed by the Governor March 20, 2009.

## CHAPTER 59

### (HB 410)

AN ACT relating to the Kentucky State Police.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 16.010 is amended to read as follows:

As used in KRS *16.010 to 16.185 and Sections 12 to 15 of this Act*~~{16.030 to 16.170}~~, unless the context requires otherwise:

- (1) "Cabinet" means the Justice and Public Safety Cabinet;
- (2) "Secretary" means the secretary of justice and public safety;
- (3) "Commissioner" means the commissioner of the Department of Kentucky State Police;
- (4) "Officer" means any member of the Department of Kentucky State Police, *other than an individual employed as a Trooper R Class*, who possesses the powers of a peace officer;
- (5) "Civilian" means such experts, statisticians, clerks, and other assistants who do not possess the powers of a peace officer;
- (6) "Board" means the Department of Kentucky State Police Personnel Board;
- (7) "Department" means the Department of Kentucky State Police;~~and~~
- (8) "Continuous service" for participation in and eligibility for the promotional process for each rank *of officer commissioned under this chapter* means:
  - (a) For sergeant, service as a commissioned Kentucky State Police officer that has not been interrupted by actual separation from the department, whether in the form of resignation, retirement, or termination;
  - (b) For lieutenant, service in grade as a sergeant that has not been interrupted by actual separation from the department, whether in the form of resignation, retirement, termination, or by demotion in accordance with KRS 16.140;

- (c) For captain, service in grade as lieutenant that has not been interrupted by actual separation from the department, whether in the form of resignation, retirement, termination, or by demotion in accordance with KRS 16.140; *and*
- (9) *"Trooper R Class" means any retired Kentucky State Police officer commissioned under this chapter who has become reemployed with the department on a contractual basis pursuant to Sections 12 to 15 of this Act.*

➔Section 2. KRS 16.040 is amended to read as follows:

- (1) The department shall consist of the commissioner and the number of officers, *individuals employed as a Trooper R Class*, and civilians, and shall be organized in the manner as the commissioner from time to time determines.
- (2) All persons appointed as officers shall at the time of their appointment:
  - (a) Be not less than twenty-one (21) nor more than thirty-one (31) years of age;
  - (b) Be of good moral character, and in good health;
  - (c) Be citizens of the United States and residents of the Commonwealth; and
  - (d) Possess a minimum of sixty (60) hours of credit, or an associate degree, from an accredited college or university, or be a high school graduate with at least two (2) years' experience in the military or in law enforcement.
- (3) The commissioner shall prescribe minimum physical requirements for appointment as an officer of the department *and for individuals employed as Trooper R Class*, and shall conduct such tests and require such physical examinations as deemed necessary to determine the fitness and qualification of each applicant. All other qualifications being equal, preference shall be given to veterans of the Armed Forces of the United States in time of war, who were honorably discharged.
- (4) The commissioner shall direct an investigation to be conducted in order to determine an applicant's suitability for employment as an officer. The contents of the investigation shall be subject to the Open Records Act, KRS 61.870 to 61.884 and KRS 61.991, except that the identity of any witness or informant involving information relative to this investigation shall remain confidential. The identity of any witness or informant shall be subject to the subpoena power of a court of competent jurisdiction.

➔Section 3. KRS 16.055 is amended to read as follows:

- (1) Promotions to sergeant within the department shall be on the following terms and conditions:
  - (a) The applicant must have served six (6) years of continuous service as a commissioned State Police officer to be eligible for promotion to sergeant;
  - (b) Promotions shall be based on cumulative scores computed from *twenty-five*~~twenty~~ percent (25%)~~(20%)~~ on personnel performance evaluation, *thirty*~~forty~~ percent (30%)~~(40%)~~ on job simulation examination, and *forty-five*~~forty~~ percent (45%)~~(40%)~~ on a written examination;
  - (c) The promotional list shall *be valid*~~continue in existence~~ for one (1) year, shall consist of the numerical scores and rankings of each applicant, and promotions shall be made in consecutive order beginning with the highest numerical ranking to fill an interim vacancy. When two (2) or more applicants receive the same numerical score, the order of placement on the list shall be determined by seniority of service. Upon the determination of a new numerical ranking following a new examination, all previous rankings shall be null and void;
  - (d) The written examination shall be prepared and administered by an individual designated by the commissioner. The materials and textbooks will be selected by the commissioner and his or her staff. The commissioner will inform all applicants at least three (3) months prior to the examination date of the exact material from which test questions will be taken;
  - (e) The written test shall be administered to all applicants at the same time. Immediately upon completion of the written test the applicant will receive his or her numerical score. Such numerical score shall remain valid for a period of two (2) years following the date of examination unless the source material upon which the test is based is changed by more than thirty percent (30%);

- (f) The job simulation examination shall be evaluated by boards designated by the commissioner consisting of the commissioner or his or her designated appointee not lower than rank of captain, an officer from another police agency of the rank equal to the position for which the applicant is competing, an instructor from an accredited law enforcement education program, a personnel director from private industry, and an officer from the Kentucky State Police of the rank equal to the position for which the applicant is competing;
  - (g) The designated job simulation examination boards will perform all evaluations under guidelines developed and approved by the commissioner; and
  - (h) Personnel evaluations shall be made by the appropriate supervisory personnel under procedures established and approved by the commissioner.
- (2) Promotions from sergeant to lieutenant within the department shall be on the same terms and conditions as promotions to sergeant. In addition, any applicant for lieutenant must have completed at least one (1) year of continuous service in grade as sergeant.
  - (3) Promotions from lieutenant to captain within the department shall be on the same terms and conditions as promotions to lieutenant. In addition, any applicant for captain must have completed at least one (1) year of continuous service in grade as lieutenant.
  - (4) The department will develop and administer only one (1) test for each of the above ranks. All eligible applicants will be permitted to participate in the promotional process to the next highest position of responsibility wherever a vacancy exists.
  - (5) Officers promoted to rank of sergeant, lieutenant, or captain shall serve a probationary period for one (1) year of continuous service from the effective date of their promotions, and may be reverted to their previous rank with or without cause at any time during this period.
  - (6) The provisions of KRS 16.140 to the contrary notwithstanding, all ranks above the grade of captain are temporary and shall not be subject to the provisions for selection and promotion as required herein. All officers in such temporary positions shall serve at the pleasure of the commissioner and shall revert to their previous permanent rank upon the termination of their temporary appointment.
  - (7) The total number of supervisory officers of all classifications shall be limited to a ratio not to exceed one (1) supervisor for every five (5) nonsupervisory officers.
  - (8) No officer of the department, other than temporary positions above the rank of captain, shall be promoted to the next highest rank without competing with other officers as prescribed by this promotional procedure.
  - (9) There shall be no discrimination based on race, sex, age, national origin, color, religion, creed, or political affiliation with respect to the department promotional system. All personnel actions are to be based solely on merit.

➔Section 4. KRS 16.060 is amended to read as follows:

It shall be the duty of the commissioner, ~~and~~ each officer of the department, **and each individual employed as a Trooper R Class** to detect and prevent crime, apprehend criminals, maintain law and order throughout the state, to collect, classify and maintain information useful for the detection of crime and the identification, apprehension and conviction of criminals and to enforce the criminal, as well as the motor vehicle and traffic laws of the Commonwealth. To this end the commissioner, ~~and~~ each officer of the department, **and each individual employed as a Trooper R Class** is individually vested with the powers of a peace officer and shall have in all parts of the state the same powers with respect to criminal matters and enforcement of the laws relating thereto as sheriffs, constables and police officers in their respective jurisdictions, and shall possess all the immunities and matters of defense now available or hereafter made available to sheriffs, constables and police officers in any suit brought against them in consequence of acts done in the course of their employment. Any warrant of arrest may be executed by the commissioner, ~~or~~ any officer of the department, **and each individual employed as a Trooper R Class**.

➔Section 5. KRS 16.070 is amended to read as follows:

- (1) The commissioner is the head and chief executive officer of the department. He or she shall provide for himself or herself, ~~and~~ each officer of the department, **and each individual employed as a Trooper R Class**, under the provisions of KRS 45A.045 to 45A.650, such uniforms, equipment, and facilities, including motor vehicles,

necessary to the performance of their respective duties, but all uniforms, equipment, and facilities, including motor vehicles, shall remain the property of the Commonwealth. The commissioner may sell through the Finance and Administration Cabinet, under the provisions of KRS 45A.045 to 45A.650, such uniforms, equipment, and facilities, including motor vehicles, as become unfit for use, and all moneys received therefrom shall be paid into the State Treasury and credited to a revolving fund to be used by the department.

- (2) The commissioner shall keep an inventory and shall charge against each officer *and each individual employed as a Trooper R Class* the value of all property of the department issued to him or her, and if it is determined by the commissioner that any loss or destruction of property was due to the carelessness or neglect of an officer *or an individual employed as a Trooper R Class*, then the value of the property shall be deducted from the pay of the officer *or the individual employed as a Trooper R Class*.
- (3) By agreement with the commissioner of highways of the Commonwealth, the commissioner of the Department of Kentucky State Police may provide for the leasing of motor vehicles and accessories thereto, radio facilities and equipment, office equipment, and other property or facilities, upon such terms and conditions and for such compensation as said agreement may provide. The commissioner of highways and the commissioner of the Department of Kentucky State Police may further provide, by agreement, for the service and repair at any state garage of motor vehicles or accessories thereto which are owned, operated, or rented by the department, upon such terms and conditions and for such compensation as said agreement may provide. Subject to KRS Chapter 42, the department is authorized, by lease or purchase, to acquire, maintain, and operate motor vehicles, and the officers of said department, including the commissioner *and individuals employed as Trooper R Class*, are authorized and empowered to operate such motor vehicles in the course of their duties, and in carrying out the purposes, responsibilities, and functions provided for in KRS 16.010 to 16.170.
- (4) The commissioner shall establish local headquarters so as to best distribute the officers, *individuals employed as Trooper R Class*, and employees of the department throughout the various sections of the Commonwealth where they will be most efficient in carrying out the provisions of KRS *16.010 to 16.185 and Sections 12 to 15 of this Act*~~[16.010 to 16.170]~~.

➔Section 6. KRS 16.080 is amended to read as follows:

- (1) The commissioner shall promulgate administrative regulations for the enlistment, training, discipline, and conduct of officers of the department *and individuals employed as Trooper R Class*, and ~~the commissioner~~~~he or she~~ may promulgate administrative regulations for the governing and operation of the department as appear to him or her reasonably necessary to carry out the provisions of KRS 16.010 to 16.170.
- (2) The commissioner may require any officer, *individual employed as a Trooper R Class*, or civilian who receives or disburses public funds in the course of his or her duties to file a bond, conditioned that he or she will honestly, correctly, and according to law, receive, disburse, and account for all public moneys coming into his or her hands. The commissioner,~~and~~ each officer, *and each individual employed as a Trooper R Class*, shall execute a bond to the Commonwealth of Kentucky in the sum of not less than two thousand dollars (\$2,000), conditioned upon the faithful discharge of his or her duties. The premium on the bonds shall be paid by the department. The commissioner,~~and~~ each officer of the department, *and each individual employed as a Trooper R Class* shall, before entering upon the discharge of their official duties, take the constitutional oath of office.
- (3) Subject to the provisions of KRS 56.440 to 56.550, the commissioner, with the approval of the Governor and the secretary of the Finance and Administration Cabinet, may acquire real estate or interests therein, by purchase, lease, or otherwise, necessary for the purposes of the department, and, with like approval, provide for the acquisition or construction of necessary buildings and other permanent structures and facilities. Title to any real estate acquired shall be taken in the name of the Commonwealth.

➔Section 7. KRS 16.100 is amended to read as follows:

- (1) The commissioner may approve vouchers in payment of expenses, including travel, lodging and meals incurred by officers, *individuals employed as Trooper R Class*, and civilians of the department in the discharge of their duties, and such vouchers shall be audited and paid out of the department's appropriation in the manner required by law.
- (2) The commissioner may, with the approval of the secretary of the Finance and Administration Cabinet, approve payment of a per diem allowance for officers of the department *and individuals employed as Trooper R Class*, payable in a fixed sum for each day the officer *or individual employed as a Trooper R Class* is on duty. The

per diem allowance herein provided shall not be payable when the officer *or the individual employed as a Trooper R Class* is on travel status as provided by subsection (1) of this section.

→Section 8. KRS 16.110 is amended to read as follows:

No fee for the performance of an act in line of duty, and no reward offered for the apprehension and conviction of any person or for the recovery of any property may be accepted by any officer, *individual employed as a Trooper R Class*, or employee of the department, but any fee or reward to which such officer, *individual employed as a Trooper R Class*, or civilian would be entitled, apart from the foregoing provision, shall be paid into the State Treasury and credited to a revolving fund, to be used by the department.

→Section 9. KRS 16.140 is amended to read as follows:

- (1) With the exceptions specified in this section, KRS 16.150, ~~and KRS~~ 16.160, *and Sections 12 to 15 of this Act*, no officer of the department shall be removed, suspended, reduced in grade or pay for any reason except inefficiency, misconduct, insubordination, or violation of law or of any administrative regulation promulgated by the commissioner. Any person may prefer charges in writing against any officer *or individual employed as a Trooper R Class*, which shall be filed in the Office of Internal Affairs, which shall be designated by the commissioner as the recipient of charges and shall be administratively responsible for the maintenance of good order within the department through the collection and investigation of charges and the retention of their dispositions. The charges shall be signed by the person making the same, and shall set out with clarity and distinction each and every charge. The commissioner, whenever probable cause appears, shall prefer charges against any officer whom he believes to have been guilty of conduct justifying his removal or punishment, in the interest of public order. Within five (5) days after the filing of charges, the Office of Internal Affairs shall deliver a copy thereof, personally, by certified mail, return receipt requested to the officer offending. Within five (5) days after the receipt thereof, the officer may demand public hearing, or may admit the truth of the charges in whole or in part. If the officer admits the truthfulness of the charges, the commissioner shall remove, suspend, reduce in rank or pay the officer so offending, in proportion to the seriousness of the charges.
- (2) If the charges are denied and the officer demands a hearing within the time above specified, he shall make his demand known to the commissioner in writing. After demand for hearing has been made, the commissioner within twenty (20) days from the date thereof shall arrange for a public hearing before a trial board to be constituted in the manner provided in this section. The officer defendant shall be given not less than twenty (20) days' notice of the time, place, and hour of the hearing.
- (3) Upon the hearing, all charges shall be considered traversed and put in issue, and the trial shall be confined and limited to the issues presented by the written charges. The trial board hearing the charges may summon and compel the attendance of witnesses at all hearings or sittings, by subpoena issued by the commissioner and served upon any witness by any sheriff or other person authorized by law to serve process. If any person fails to comply with any lawful order of the department or with process, or if any witness refuses to testify concerning any matter in which he may lawfully be interrogated, any Circuit Judge, upon application of the trial board, or the commissioner, may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the Circuit Court or a refusal to testify in that court.
- (4) The officer defendant shall have the right to subpoena in his behalf any witnesses he may desire, upon furnishing their names to the trial board or to the commissioner. The officer shall likewise have the right to appear in person and by counsel.
- (5) All charges against the officer defendant, together with all proceedings before the trial board, shall be transcribed and reduced to writing and a permanent record kept thereof.
- (6) In any instance where the commissioner has probable cause to believe that an officer has been guilty of conduct justifying his removal or punishment, he may immediately suspend the officer from duty, or from both pay and duty, pending trial, and the officer shall not be again placed on duty or allowed pay thereafter until a determination of the charges under this section.
- (7) The trial board, after hearing the charges, shall fix the punishment of any officer found guilty of any one (1) or more charges, by reprimand or suspension for any length of time not to exceed six (6) months, or by reducing the grade if the officer's classification warrants same, or by combining any two (2) or more of the punishments, or by reducing the monthly salary of the officer by not more than twenty percent (20%) for not more than six (6) months, or by removing or dismissing from the service of the department any officer so found guilty.

- (8) For the purpose of hearing charges against any officer, as set forth in this section, there is created a trial board, which shall consist of the commissioner and of a panel of ten (10) officers of the department appointed by the commissioner. The commissioner shall designate from the panel not less than three (3) nor more than seven (7) members thereof to hear charges against any officer in the manner and under the procedure above set forth. The commissioner may promulgate reasonable administrative regulations governing the procedure before the trial board, which do not conflict with this section. The panel or trial board shall be a continuing body, and the officers designated shall serve thereon in addition to their other duties and without any increase in compensation, except they may be reimbursed for meals, lodging, and traveling expenses incurred while in the performance of their official duties as members of the board. Any officer defendant may for cause challenge the right of any member of the board in the trial of any action against him, and if the remaining members of the board find that the challenge is justifiable, the member of the board shall be excused from hearing the charges, and another member substituted in lieu thereof.
- (9) No officer is entitled to a hearing as provided in this section, unless his suspension is for more than twenty (20) days, or his pay reduced more than ten percent (10%); but if the officer receives more than twenty (20) days' suspension or reduction in salary of more than ten percent (10%) within a period of one (1) year, he shall have the right to such hearing in the manner above provided.
- (10) Any civilian employee may be discharged, suspended, or reduced in pay at any time by the commissioner, pursuant to KRS Chapter 18A.
- (11) Any officer appointed to the department shall be considered on probation for a period of one (1) year from and after the date of his appointment, and during that period may be discharged or suspended or reduced in rank or pay, with or without cause, by the commissioner. The rights conferred upon an officer for a hearing, as provided in this section, shall not accrue until the officer has been employed by the department for a period of one (1) year or more.

➔Section 10. KRS 16.185 is amended to read as follows:

- (1) Any officer *or individual employed as a Trooper R Class* who is sued for any act or omission in the line of duty and who has a judgment for monetary damages rendered against him or her in his or her individual capacity, and who personally suffers actual financial loss, unreimbursed from any source, by the enforcement and satisfaction of the judgment, including any costs or attorney fees awarded pursuant thereto, shall be indemnified by the Commonwealth, from funds appropriated to the Finance and Administration Cabinet for the payment of judgments, to the extent of his or her actual financial loss.
- (2) The indemnification shall be contingent upon an express determination by the commissioner that the act or omission which resulted in liability was within the scope and course of the officer's *or the individual employed as a Trooper R Class's* employment and occurred during the performance of duty and was committed or omitted in the good faith belief that the act or omission was lawful and proper.
- (3) If the officer seeking indemnification is the commissioner, the determination referred to in subsection (2) of this section shall be made by the Governor.
- (4) The indemnification shall not be construed to abrogate or limit any privilege, immunity, or matter of defense otherwise available to the officer *or individual employed as a Trooper R Class* and shall not constitute a waiver of any privilege, immunity, or matter of defense, including the sovereign immunity of the Commonwealth.
- (5) The indemnification shall not be the subject of comment, directly or indirectly, before any jury hearing any cause of action in which an officer *or individual employed as a Trooper R Class* is a party, and any comment before the jury shall result in an immediate mistrial.

➔Section 11. KRS 16.170 is amended to read as follows:

No officer of the department *or individual employed as a Trooper R Class* shall, directly or indirectly, give, solicit or receive, or be in any manner concerned in giving, soliciting or receiving, any assessment, subscription or contribution for any political party or political purpose whatever. No officer *or individual employed as a Trooper R Class* shall, orally or by letter, solicit or be in any manner concerned in soliciting any assessment, subscription or contribution for any political party or purpose whatever from any person holding a position in the department. No officer of the department *or individual employed as a Trooper R Class* shall take any part in political management or affairs or in political campaigns further than to cast his vote and to express privately his opinion. Violation of the provisions hereof shall be grounds for removal.

➔SECTION 12. KRS CHAPTER 16A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*There is created within the Department of Kentucky State Police the position of Trooper R Class that shall be utilized by the commissioner to retain retired officers commissioned under KRS Chapter 16 on a contractual basis to supplement the ranks of the Kentucky State Police.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 16A IS CREATED TO READ AS FOLLOWS:

*An individual employed as a Trooper R Class under the provisions of Sections 12 to 15 of this Act shall:*

- (1) *Be a retired officer who prior to retirement was commissioned as an officer under KRS Chapter 16;*
- (2) *Be a retired member of the State Police Retirement System established by KRS 16.505 to 16.652 who retired with at least twenty (20) years of service credit;*
- (3) *Upon appointment to Trooper R Class, have been separated from the service of the Department of Kentucky State Police for a period no less than one (1) month nor greater than sixty (60) months following the individual's effective retirement date from the State Police Retirement System;*
- (4) *Have retired willingly with no administrative charges against the officer pending under Section 9 of this Act; and*
- (5) *Have retired with no pre-existing agreement between the employee and the department prior to the employee's retirement for the employee to return to work with the department.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 16A IS CREATED TO READ AS FOLLOWS:

*The appointment, salary, benefits, and number of individuals employed as a Trooper R Class shall be as follows:*

- (1) *The commissioner may appoint Trooper R Class employees. Trooper R Class employees shall serve on a contractual basis for a term of one (1) year and the contract may be renewed annually, by agreement of the parties, for no more than four (4) additional one (1) year terms.*
- (2) *The compensation for Trooper R Class employees shall be established by administrative regulation promulgated pursuant to KRS Chapter 13A.*
- (3)
  - (a) *All appointments of individuals employed as Trooper R Class shall be based upon agency need as determined by the commissioner.*
  - (b) *Work stations for individuals employed as Trooper R Class shall be determined by agency need with consideration given to the applicant's stated preference.*
  - (c) *Merit of individuals employed as Trooper R Class shall be determined by the applicant's work performance history.*
  - (d) *Fitness of individuals employed as Trooper R Class shall be determined by the applicant's ability to adhere to the agency standards set by the commissioner under KRS Chapter 16.*
- (4) *The number of individuals employed as Trooper R Class by the department shall not:*
  - (a) *Exceed one hundred (100); or*
  - (b) *Be counted in the total employee cap for the department.*
- (5) *All individuals employed as Troopers R Class shall be assigned the job duties of trooper and shall not be placed in any supervisory positions or special work assignments.*
- (6) *Notwithstanding any provision of KRS 16.505 to 16.652, KRS 18A.005 to 18A.228, and KRS 61.510 to 61.705 to the contrary:*
  - (a) *Individuals employed as Trooper R Class shall continue to receive all retirement and health insurance benefits provided by the systems administered by Kentucky Retirement Systems to which they were entitled upon retiring from the department as a commissioned officer under KRS Chapter 16;*

- (b) *Individuals employed as Trooper R Class shall not be eligible to receive health insurance coverage or benefits through the department and shall not be eligible to participate in the State Police Retirement System; and*
- (c) *The department shall not pay health insurance contributions to the state health insurance plan for individuals employed as Troopers R Class.*
- (7) *Individuals employed as Trooper R Class shall be employed on a contractual basis and shall be provided due process pursuant to Section 9 of this Act for any disciplinary action imposed by the commissioner. A decision by the commissioner to not renew a contract shall not be considered a disciplinary action for purposes of this section.*
- (8) *The provisions of this section shall not eliminate or reduce any requirements under KRS 61.637 for the department to pay employer contributions to the retirement systems or to reimburse the retirement systems for the cost of retiree health, on any individual employed as a Trooper R class.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 16A IS CREATED TO READ AS FOLLOWS:

- (1) *All individuals employed as Trooper R Class shall adhere to the agency standards of conduct and policy.*
- (2) *Any person may proffer charges against an individual employed as a Trooper R Class by submitting a written complaint, signed by the complainant, with the Office of Internal Affairs within the department.*

**Signed by the Governor March 20, 2009.**

## CHAPTER 60

### (HB 445)

AN ACT relating to deductibles for food spoilage resulting from a declared federal disaster and declaring an emergency.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 304.12-100 is amended to read as follows:

Nothing in KRS 304.12-080, 304.12-090, or 304.12-110 shall be construed as prohibiting:

- (1) Payment of lawfully earned commission or other lawful compensation to duly licensed insurance producers as defined in KRS 304.9-020(7) or compensation disclosed in a written disclosure agreement as described in KRS 304.11-042;
- (2) Distribution by a participating insurer to its participating policyholders of dividends, savings, or the unused or unabsorbed portion of premiums and premium deposits;
- (3) Furnishing of information, advice, programs, or services that are intended to reduce the future cost of insurance of the policyholder or the probability or severity of loss and assist in the efficient administration and management of the policyholder's insurance program or to assist the client in complying with any state or federal law. Such services shall include but are not limited to providing software to administer an insured's employee benefits or risk management programs, employee wellness programs, risk management services, loss control services, workers' compensation analysis forecasting, or any other service designed to assist in the efficient administration of a policyholder's insurance program;
- (4) Life insurers from paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, if such bonus or abatement is fair and equitable to all policyholders and for the best interests of the insurer and its policyholders;
- (5) In the case of insurance policies issued on the debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the savings in collection expense or making allowance to policyholders who make premium payments at less frequent intervals than required; ~~{or}~~
- (6) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of any policy year of insurance thereunder, which may be made retroactive only for such policy year; ***or***

- (7) *An insurer from waiving, in whole or in part, a policyholder's deductible for food spoilage for an insured risk located in a county declared to be a federal disaster area.*

➔Section 2. Whereas citizens of the Commonwealth have experienced serious financial losses as a result of the recent inclement weather, an emergency is declared to exist and this Act shall take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by the Governor March 20, 2009.**

## CHAPTER 61

### (HB 462)

AN ACT relating to grain.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 251.430 is amended to read as follows:

Any person, firm, or corporation who accepts grain for storage in this state shall first procure a license from the department as required by the board before transacting any business. This shall not apply to the storage of grain by an establishment bonded and licensed under the provisions of a federal law to the extent that the stored grain is covered by a federal bond and law; otherwise, the establishments shall comply with the provisions of this chapter. Any establishment that has unpaid-for grain thirty (30) days after delivery of the last load by a producer shall be considered in the grain storage business. The license shall expire on June 30, and shall be renewed annually by August 1. The fee for each license shall be according to the following schedule, and shall be ~~deposited in the Kentucky grain insurance fund as a regular contribution to be~~ used for carrying out the provisions of *this chapter* ~~[KRS 251.410 to 251.510]~~:

Total annual volume handled:

- (1) Under two million (2,000,000) bushels, three hundred dollars (\$300);
- (2) Two million (2,000,000) to five million nine hundred ninety-nine thousand nine hundred ninety-nine (5,999,999) bushels, four hundred fifty dollars (\$450);
- (3) Six million (6,000,000) to nine million nine hundred ninety-nine thousand nine hundred ninety-nine (9,999,999) bushels, six hundred dollars (\$600); or
- (4) Ten million (10,000,000) bushels and up, seven hundred fifty dollars (\$750).

➔Section 2. KRS 251.451 is amended to read as follows:

- (1) Each warehouseman shall file with the department a surety bond issued by a surety company authorized to transact business within the Commonwealth of Kentucky, payable to the Commonwealth with the Commissioner as trustee. A warehouseman may file with the department, in lieu of a surety bond, a certificate of deposit payable to the Commissioner, as trustee, ~~or~~ an irrevocable letter of credit on forms *provided* ~~[prescribed]~~ by the Commissioner, *or, upon approval by the Commissioner, a warehouse receipt for temporary surety until permanent surety is issued by a surety company.* The principal amount of the certificate, ~~or~~ letter of credit, *or temporary surety* shall be the same as that required for a surety bond under this section, and the interest ~~thereon~~, if any, shall be made payable to the purchaser. The amount of the bond for a warehouseman shall be established by *administrative regulation* ~~[rule of the department]~~, but in no event shall the sum be less than twenty-five cents (\$0.25) per bushel of the total maximum bushel capacity of the warehouse or ten thousand dollars (\$10,000), whichever is greater.
- (2) The bond shall be conditioned on the faithful performance of duties as an operator and the full and unreserved compliance with the laws of this state and *any administrative regulations promulgated by* ~~[the rules of]~~ the department ~~[in relation thereto]~~, so that the depositors holding warehouse receipts, contracts, or other documented evidence of stored grain may receive the benefit of the bond. The aggregate liability of the surety to all depositors shall in no event exceed the sum of the bond. Neither the issuance of warehouse receipts by a warehouseman to himself for grain owned in whole or in part by him, the commingling of grain owned by the warehouseman with grain stored for others, or any violation by a warehouseman of KRS 251.420 to 251.510 or of the *administrative regulations promulgated* ~~[rules and regulations issued]~~ by the department shall constitute

a defense in any action brought upon any bond, and all such bonds shall so provide. Maximum capacity of a warehouse shall be determined by dividing the cubic volume of all bins by two thousand one hundred fifty and forty-two one hundredths (2,150.42) cubic inches. The bond shall be kept in force at all times while the operator is conducting a warehouse. Failure to keep the bond in force shall be cause for revocation of the license and subjects the warehouseman to the criminal penalty provided in KRS 251.990. Each bond shall contain a provision that it may not be canceled by either the surety or the principal except upon sixty (60) days' notice in writing to the department at its offices in Frankfort. The notice shall not affect the liability accrued or that which may accrue under the bond before the expiration of the sixty (60) days. The department may require additional bond where the assets of any warehouseman appear insufficient, when compared to his storage obligations, or to meet the bond requirements of the United States or any agency or corporation controlled by the United States when they have a contract for storage with the warehouseman. The additional bond shall be a dollar amount equal to the insufficiency. Failure to post ~~an~~<sup>such</sup> additional bond shall constitute grounds for suspension or revocation of a license issued under KRS 251.430.

➔Section 3. KRS 251.640 is amended to read as follows:

- (1) It is declared to be in the public interest and highly advantageous to the agricultural economy of the state that all producers of grain shall be assessed at a rate of .0025 times the gross value of all marketed grain and provide for the collection of the assessment for the purpose of financing or contributing to the financing of the Kentucky grain insurance fund, which is hereby created.
- (2) Upon the establishment of the Kentucky Grain Insurance Corporation, the Commissioner shall notify by certified mail, all persons in this state engaged in the business of purchasing grain from producers, that on and after the date specified in the letter, the specified assessment shall be deducted from the producer's payment by the purchaser, or his agent or representative, from the purchase price of the grain. The deducted assessment shall, on or before the fifteenth day of the month following the end of the month in which the grains are sold to the purchaser, be remitted by the purchaser to the grain insurance fund. The books and records of all purchasers of grain, which shall clearly indicate the producer assessment, shall at all times be open for inspection by the Commissioner of Agriculture or his duly authorized agents during regular business hours. The Commissioner or his agents may take steps as are reasonably necessary to verify the accuracy of books and records of purchasers of grain.
- (3)
  - (a) ***Beginning with the first assessment levied on or after the effective date of this Act, no assessments shall be collected by the department under paragraph (b) of this subsection unless the board has certified that the fund is less than three million dollars (\$3,000,000). For subsequent assessments, the provisions and amounts specified in paragraph (b) of this subsection apply.***
  - (b) If and when the fund is more than ***ten million dollars (\$10,000,000)***~~four million dollars (\$4,000,000)}~~, no fees shall be assessed by the department unless the amount in the fund drops below ***ten million dollars (\$10,000,000)***~~four million dollars (\$4,000,000)}~~. If the fund is more than ***ten million dollars (\$10,000,000)***~~four million dollars (\$4,000,000)}~~, no later than April 30 of each year, the board shall meet and certify the fund is in excess of ***ten million dollars (\$10,000,000)***~~four million dollars (\$4,000,000)}~~. Upon this certification, no assessment shall be assessed or collected for that licensed year. If at any time after the board has certified the ***ten million dollars (\$10,000,000)***~~four million dollar (\$4,000,000)}~~ amount, the board receives notification of the fund being less than ***eight million dollars (\$8,000,000)***~~three million dollars (\$3,000,000)}~~, the board shall within thirty (30) days certify that the fund has less than ***eight million dollars (\$8,000,000)***~~three million dollars (\$3,000,000)}~~, and the assessment shall be reinstated. Upon notification from the board, the department shall within thirty (30) days reinstate the assessment fee of .0025 times the gross value of the grain purchased.
- (4) Any producer upon and against whom the assessment is levied and collected under the provisions of this section, if dissatisfied with the assessment, may demand of and receive from the treasurer of the grain insurance corporation a refund of assessment collected from the producer, if the demand for refund is made in writing within thirty (30) days from the date on which the assessment is collected from the producer. By voluntarily submitting to a refund, the producer forgoes any protection or compensation provided for by the grain insurance corporation.
- (5) When in the judgment of the board or the duly certified association, a purchaser has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of KRS 251.410, 251.430, 251.440, 251.451, 251.490, ~~or~~<sup>and</sup> 251.600 to 251.740, the grain insurance corporation may make application

to the Franklin Circuit Court for an order enjoining the acts or practices, and obtain a restraining order and preliminary injunction against the purchaser.

- (6) The assessments by the department in accordance with this section are in addition to any other fees or assessments required by law.

➔Section 4. KRS 251.642 is amended to read as follows:

- (1) Producers who have requested and received a refund of an assessment in accordance with KRS 251.640(4) may reenter the grain insurance program by:
- (a) Petitioning the Kentucky Grain Insurance Board for approval of reentry into the program; and
  - (b) Immediately upon mailing the petition for reentry to the offices of the Kentucky Department of Agriculture, placing an amount equal to all previous assessment refunds to that producer in an escrow account in a local bank, the previous assessments and the terms and conditions of the escrow account to be determined by the Kentucky Department of Agriculture.
- (2) The board shall review the producer's petition for reentry and if approved the producer shall repay into the grain insurance fund all previous assessment refunds as determined by the Kentucky Department of Agriculture. Producers reentering the grain insurance program in accordance with this section will be protected by the program from the time all previous assessment refunds were placed in escrow.
- (3) Once the fund reaches *ten million dollars (\$10,000,000)*~~{four million dollars (\$4,000,000)}~~ and all assessments to the Kentucky grain insurance fund have ceased in accordance with KRS 251.640, all producers who have not requested and received a refund shall be participants in the program.
- (4) No producer will be granted protection of the grain insurance program who has not been a participant in the program prior to meeting the criteria of a claimant.

➔Section 5. KRS 251.660 is amended to read as follows:

In the event that amounts in the Kentucky grain insurance fund are insufficient to pay the approved claims, funds to satisfy the unpaid claims shall be made available to the corporation *as provided by this section*~~{in amounts not to exceed at any one (1) time a maximum of one and one half million dollars (\$1,500,000)}~~. KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740 shall constitute an irrevocable and continuing appropriation for, and direction to, the secretary of the Finance and Administration Cabinet and the State Treasurer to make the necessary transfers and disbursements from the revenues and funds of the state for that purpose. The state shall be reimbursed, with interest at the rate paid on ninety (90) day United States Treasury bills, for any amounts paid under this section upon replenishment of the fund from assessments made *in accordance with*~~{pursuant to}~~ KRS 251.640.

➔Section 6. KRS 251.670 is amended to read as follows:

- (1) Within ninety (90) days of the board's approval of a valid claim, the board shall, in accordance with the provisions of this section, compensate from the grain indemnity trust fund any claimant who has incurred a financial loss due to a failure of a grain dealer or warehouseman.
- (2) Any claimant who has incurred a financial loss due to a failure of a licensed grain dealer shall be entitled to be compensated for eighty percent (80%) of a valid claim, to a maximum of *two hundred thousand dollars (\$200,000)*~~{one hundred thousand dollars (\$100,000)}~~, with moneys from the Kentucky grain insurance fund, provided that the claim is brought within one (1) year from the time the claimant receives actual notice of the grain dealer's failure. To the maximum extent that funds are or may be made available for the purpose *of paying a claim*, the remaining balance of the claim shall be paid by the board from the assets and other security of the failed grain dealer, provided that any claimant who has incurred a financial loss due to the failure of a grain dealer and who has surrendered a warehouse receipt for payment shall be compensated for one hundred percent (100%) of a valid claim.
- (3) Any claimant who has incurred a financial loss due to a failure of a licensed grain warehouseman shall be entitled to be compensated for eighty-five percent (85%) of a valid claim with moneys from the Kentucky grain insurance fund, provided that the claim is brought within one (1) year from the time the claimant receives actual notice of the warehouseman's failure. To the maximum extent that funds are or may be made available for ~~the~~~~{such}~~ purpose *of paying a claim*, the remaining balance of ~~the~~~~{such}~~ claim shall be paid by the board from the assets and other security of the failed grain warehouse, provided that any claimant who has incurred a

financial loss due to the failure of a grain warehouse and who has surrendered a warehouse receipt for payment shall be compensated for one hundred percent (100%) of a valid claim.

➔ Section 7. KRS 251.720 is amended to read as follows:

- (1) Any person engaged in the business of buying grain from producers for resale, milling, or processing shall first procure a license from the department as required by the board before transacting business. The license shall expire on June 30 and shall be renewed annually by August 1. The annual license fee shall be based on the total annual volume handled as follows:
  - (a) From zero to five thousand nine hundred ninety-nine (5,999) bushels, seventy-five dollars (\$75);
  - (b) Six thousand (6,000) to ninety-nine thousand nine hundred ninety-nine (99,999) bushels, one hundred fifty dollars (\$150);
  - (c) One hundred thousand (100,000) to one million nine hundred ninety-nine thousand nine hundred ninety-nine (1,999,999) bushels, three hundred dollars (\$300);
  - (d) Two million (2,000,000) to five million nine hundred ninety-nine thousand nine hundred ninety-nine (5,999,999) bushels, four hundred fifty dollars (\$450);
  - (e) Six million (6,000,000) to nine million nine hundred ninety-nine thousand nine hundred ninety-nine (9,999,999) bushels, six hundred dollars (\$600); or
  - (f) Ten million (10,000,000) bushels and up, seven hundred fifty dollars (\$750).
- (2) The fee for each license shall be ~~deposited in the Kentucky grain insurance fund as a regular contribution to be~~ used for carrying out the provisions of *this chapter* ~~[KRS 251.410 to 251.510].~~
- (3) Every person licensed as a grain dealer shall file with the department a surety bond signed by the dealer as principal and by a responsible company authorized to execute surety bonds within the Commonwealth of Kentucky. A grain dealer may file with the department, in lieu of a surety bond, a certificate of deposit payable to the Commissioner, as trustee, or an irrevocable letter of credit on forms *provided* ~~[prescribed]~~ by the Commissioner. The principal amount of the certificate or letter of credit shall be the same as that required for a surety bond under this section, and the interest, if any, shall be made payable to the purchaser. The bond shall be a principal amount, to the nearest one thousand dollars (\$1,000), equal to ten percent (10%) of the aggregate dollar amount paid by the dealer to producers for grain purchased from them during the dealer's last completed fiscal year, or in the case of a dealer who has been engaged in business as a grain dealer for less than one (1) year or who has not previously been engaged as a grain dealer, ten percent (10%) of the estimated aggregate dollar amount to be paid by the dealer to producers for grain purchased from them during the next fiscal year. The bond shall not be less than twenty-five thousand dollars (\$25,000), ~~[nor more than one hundred thousand dollars (\$100,000).]~~ except as otherwise authorized by this section.
- (4) The Commissioner shall, when he questions a grain dealer's ability to pay producers for grain purchased, or when he determines that the grain dealer does not have a sufficient net worth to meet his financial obligations, require a grain dealer to post an additional bond in a dollar amount equal to the insufficiency or shall require an additional certificate of deposit or an irrevocable letter of credit equal to the insufficiency, as deemed appropriate by the Commissioner. Failure to post the additional bond or certificate of deposit or an irrevocable letter of credit constitutes grounds for suspension or revocation of a license issued under this section.
- (5) The bond or additional bond shall be made payable to the Commonwealth of Kentucky, with the Commissioner as trustee, and shall be conditioned on the grain dealer's faithful performance of his duties as a grain dealer and his compliance with this section. It shall be for the use and benefit of any producer from whom the grain dealer may purchase grain and who is not paid by the grain dealer, and shall not be *canceled* ~~[cancelled]~~, except upon at least sixty (60) days' notice in writing to the department. In no event shall the total aggregate liability of a surety exceed the face amount of its bond.
- (6) ~~[Any grain dealer who is of the opinion that his net worth and assets are sufficient to guarantee payment to producers for grain purchased by him may request the Commissioner to be relieved of the obligation of filing a bond in excess of the minimum bond of twenty five thousand dollars (\$25,000). The request shall be accompanied by a financial statement of the applicant made within five (5) months of the date of the request, certified by a licensed public accountant, and any additional information concerning the applicant and his finances as the department may require. If the financial statement discloses a net worth of an amount equal to at least three (3) times the amount of the bond required by this section and the Commissioner is otherwise~~

~~satisfied as to the financial ability and resources of the applicant, the Commissioner may waive that portion of the required bond in excess of twenty five thousand dollars (\$25,000). However, in the case of a grain dealer whose net worth is not equal to three (3) times the amount of bond required, the Commissioner may allow the grain dealer to waive, in one thousand dollar (\$1,000) increments, a portion of the bond required in excess of twenty five thousand dollars (\$25,000). The percentage factor to be applied to the bond required in excess of twenty five thousand dollars (\$25,000) shall be determined by dividing actual net worth by the net worth required to waive all bond in excess of twenty five thousand dollars (\$25,000). If the result of this computation provides a percentage factor of eighty percent (80%) or greater, then that same percentage of the bond in excess of twenty five thousand dollars (\$25,000) may be waived. The grain dealer shall then provide to the department a surety bond in the amount of twenty five thousand dollars (\$25,000), plus any additional bond required by the Commissioner.~~

- ~~(7)~~—An incidental grain dealer whose total purchases of grain from producers during any fiscal year do not exceed an aggregate dollar amount of two hundred fifty thousand dollars (\$250,000) may satisfy the bonding requirements of this section by filing with the department a bond, certificate of deposit, or an irrevocable letter of credit at the rate of one thousand dollars (\$1,000) for each ten thousand dollars (\$10,000) or fraction of ten thousand dollars (\$10,000) with a minimum bond, certificate of deposit, or an irrevocable letter of credit of **five thousand dollars (\$5,000)**~~one thousand dollars (\$1,000)~~, and a current financial statement.
- ~~(7)~~~~(8)~~ Failure of a grain dealer to file a bond, certificate of deposit, or an irrevocable letter of credit and to keep the bond, certificate of deposit, or an irrevocable letter of credit in force or to maintain assets adequate to assure payment to producers for grain purchased from them shall be grounds for the suspension or revocation of a license issued under this section.
- ~~(8)~~~~(9)~~ When the Commissioner has determined that a grain dealer has defaulted payment to producers for grain which he has purchased from them, the Commissioner shall determine, through appropriate legal procedures, the producers and the amount of defaulted payment, and, as trustee of the bond, shall immediately after the determination call for the dealer's surety bond or bonds to be paid to him for distribution to those producers who should receive the benefits. Should the defaulted amount owed producers be less than the principal amount of the bond or bonds, then the surety shall be obligated to pay only the amount of the default.
- ~~(9)~~~~(10)~~ Any grain dealer who is also in the business of storing grain and is a warehouseman as defined in KRS 251.610 may be exempted from the licensing fee and bonding requirements of KRS 251.451 as long as his storage capacity and storage obligations are considered in formulating his grain dealer bond requirement.
- ~~(10)~~~~(11)~~ The department may refuse to issue a license to any applicant or revoke the existing license of one who furnishes false or misleading information or conceals a material fact on the application or other supporting documents, has been convicted of fraud or deceptive practice, is currently adjudicated incompetent by a court of competent jurisdiction, fails to maintain an asset to liability ratio of one to one (1:1) or fails to post additional surety to cover the deficiency, or for other good cause shown. Any individual denied a license for these reasons shall be given written notice within thirty (30) days of receipt of application. Any applicant who is denied a license or has had his license revoked and feels he has been aggrieved may request a hearing by writing to the Commissioner of Agriculture. Upon request, a hearing shall be conducted in accordance with KRS Chapter 13B.
- ~~(11)~~~~(12)~~ All applications for a grain dealer license shall be accompanied by a current financial statement, or an irrevocable letter of credit from a financial institution.
- ~~(12)~~~~(13)~~ (a) A grain dealer license shall become invalid upon the cessation of operations, change of partners in a partnership, change of corporate structure of a corporation, sale, or failure to remit license fees or fines. Licensed grain dealers shall immediately notify the department as to any changes and shall surrender the invalid license to the department. In the case of a successor, the successor shall apply for a new license.
- (b) If there is a cessation of operations or sale, the department, when deemed appropriate, may cause an audit and examination to be made. In this case, all records required in this chapter shall be available to the department until the department is satisfied that all obligations have been met.

➔Section 8. KRS 251.990 is amended to read as follows:

- (1) Any person who violates the provisions of KRS 251.430 to 251.720 shall be guilty of a violation. He shall be guilty of a Class A misdemeanor for each subsequent offense. Each day of operation in violation of the provisions of KRS 251.430 to 251.720 shall constitute a separate offense.
- (2) Any person who operates without a license as required by KRS 251.430 or 251.720 shall be fined not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000) for each violation, or imprisoned for at least one (1) but not more than five (5) years, or both.
- (3) Any person who intentionally refuses or fails to pay moneys collected for assessment of grain under the Kentucky Grain Insurance Fund Program as set forth in KRS 251.640 shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or imprisoned for not more than six (6) months, or both.
- (4) Any person who fails or refuses to maintain at all times grain in storage, rights in grain, proceeds from the sale of grain, or a combination of the grain, rights, and proceeds equal to eighty percent (80%) of the value of a licensed grain storage establishment's unpaid obligations to producers for grain delivered under a forward pricing (delayed pricing) contract as required by KRS 251.485 or 251.675 shall be fined not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000) for each violation, or imprisoned for at least one (1) year but not more than five (5) years, or both.
- (5) Any person who knowingly makes any false statement, representation, or certification, or who knowingly fails to make any statement, representation, or certification in any record, report, or other document filed or required to be maintained by the Commissioner in violation of KRS 251.485(2) shall upon conviction be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each violation, or imprisoned for at least one (1) year but not more than five (5) years, or both.
- (6) Any person who transfers or disburses grain, property, or assets from the licensed grain establishment's handler account in violation of KRS 251.485(2) shall upon conviction be fined not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000) for each violation, or be imprisoned for at least one (1) year but not more than five (5) years, or both.
- (7) Except as permitted by law, any person who willfully and knowingly resists, prevents, impedes, or interferes with the Commissioner or other agents or employees of the department in performance of the duties assigned by KRS 251.485 or 251.675, shall upon conviction be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each violation, or imprisoned for not more than one (1) year, or both.
- (8) If a corporate grain establishment license holder violates any provision of KRS 251.485 or 251.675 or any administrative regulations that pertain to KRS 251.485 or 251.675, or if it fails or refuses to comply with any lawful order issued by the Commissioner, any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failed, or refused to comply with any lawful order issued by the Commissioner shall be subject to the same penalties, fines, and imprisonment as may be imposed upon a person in accordance with this section.
- (9) Any person who fails to renew a license within the time frame required by KRS 251.430 or 251.720 shall be fined one hundred fifty dollars (\$150).
- (10) All fines or penalties collected from violators of the provisions of this chapter shall be *used to carry out the provisions of this chapter* ~~deposited into the Kentucky grain insurance fund created by KRS 251.640~~.

**Signed by the Governor March 20, 2009.**

## CHAPTER 62

(SB 81)

AN ACT relating to captive cervids.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 257 IS CREATED TO READ AS FOLLOWS:

- (1) *There shall be a ban on the importation of live members of the animal family Cervidae into the Commonwealth that have not been subject to a program of surveillance and identification for cervid chronic wasting disease (CWD) that meets or exceeds:*
- (a) *The requirements of the Kentucky Cervid CWD Surveillance and Identification (CCWDSI) Program set forth in this section and in administrative regulations promulgated by the Kentucky Department of Agriculture; and*
  - (b) *Any other health requirements as regulated by the Kentucky Department of Agriculture or the United States Department of Agriculture for cervids.*
- (2) *The Kentucky Department of Agriculture shall be responsible for authorizing importation of the members of the animal family Cervidae into the Commonwealth that have been subject to a program of surveillance and identification for cervid CWD that meets or exceeds:*
- (a) *The requirements of the Kentucky CCWDSI Program set forth in this section and in administrative regulations promulgated by the Kentucky Department of Agriculture; and*
  - (b) *Any other health requirements as regulated by the Kentucky Department of Agriculture or the United States Department of Agriculture for cervids.*
- (3) *Members of the animal family Cervidae shall not be eligible for importation into the Commonwealth unless the program of surveillance and identification for cervid CWD to which they have been subject:*
- (a) *Has been certified by the exporting state's state veterinarian or agency having jurisdiction over that state's surveillance and identification program;*
  - (b) *Has been approved by the Kentucky state veterinarian as meeting or exceeding the standards imposed under the Kentucky CCWDSI Program; and*
  - (c) *Meets, at a minimum, the following requirements:*
    - 1. *The program shall require cervid owners to obtain identification and laboratory diagnosis from brain tissue as directed by the exporting state's state veterinarian or agency with jurisdiction for cervids twelve (12) months of age or greater that:*
      - a. *Display clinical signs of CWD;*
      - b. *Die, including deaths by slaughter or by hunting, including hunting on hunting preserves; or*
      - c. *Are ill or injured, regardless of whether the illness or injury results in death; and*
    - 2. *The program shall require cervid owners to obtain cervids from herds that have been monitored for at least five (5) years and that have complied with the standards contained in the Kentucky CCWDSI Program.*
- (4) *Cervids originating from a state that has reported a confirmed case of CWD in wild or captive cervids shall not be imported into Kentucky until the United States Department of Agriculture approves:*
- (a) *Regulations that allow importation from states with confirmed cases of CWD; and*
  - (b) *A live test for CWD that is available for live testing of cervids.*
- (5) *Importation of members of the animal family Cervidae into the Commonwealth shall be consistent with this section and with administrative regulations promulgated by the Kentucky Department of Agriculture in cooperation with the Kentucky Department of Fish and Wildlife Resources.*

➔Section 2. KRS 150.720 is amended to read as follows:

- (1) The Department of Agriculture in cooperation with the Department of Fish and Wildlife **Resources** shall promulgate administrative regulations pertaining to health requirements, eradication of diseases, **importation** and **unique individual** identification, **including visual identification tags**, of privately owned and farm raised cervids maintained for the production of meat and other products. **Nothing in this section shall limit the authority of the Department of Fish and Wildlife Resources to regulate the unique individual identification, including visual identification, of captive cervids that are not privately owned and farm-raised cervids maintained for the production of meat and other products.** The Department of Fish and Wildlife **Resources**

in cooperation with the Department of Agriculture, shall promulgate administrative regulations pertaining to the ~~importation and~~ holding of cervids.

- (2) If any person imports a diseased animal into the Commonwealth in violation of the statutes and administrative regulations, then that person shall be responsible to the Department of Agriculture and the Department of Fish and Wildlife *Resources* for all costs incurred in the investigation, response, and eradication of that disease.

➔Section 3. KRS 150.725 is amended to read as follows:

As used in KRS 150.725 to 150.735:

- (1) "Permit" means a permit to hold captive cervids;
- (2) "Applicant" means a person or entity who has applied to the department for a permit to hold captive cervids; ~~and~~
- (3) "Application" means an application to obtain a permit to hold captive cervids; *and*
- (4) **"Hold" means to confine to a facility regulated under KRS 150.725 to 150.735.**

➔Section 4. KRS 150.735 is amended to read as follows:

- (1) An applicant may place his or her primary containment fence on the property line. The department shall not require applicants to set primary containment fences any distance away from the property line.
- (2) Any person who operates a captive cervid facility in accordance with this chapter may petition the department at any time to expand his or her captive cervid facility, provided the expansion is adjacent and connected to his or her existing facility and continues to comply with all applicable statutes and regulations.
- (3) A lawful permit for an existing captive cervid facility may be transferred, along with any related benefits, rights, responsibilities, and liabilities, to any person who purchases or otherwise takes ownership of the land area on which the captive cervid facility exists. Within thirty (30) days of the date of any transfer of permits, the party transferring the permit shall notify the department of the following:
- Name and address of the party to which the permit is to be transferred;
  - Permit number;
  - Deed indicating change of land ownership; and
  - Any additional information the department deems necessary.
- (4) If any person holding captive cervids is determined in violation of Kentucky statute or administrative regulation pertaining to the holding of those cervids, then that person shall have sixty (60) days from when the violation was identified to come into compliance. ***The permit holder has the following rights and potential penalties during the sixty (60) day period:***
- During the sixty (60) day period, the permit holder may continue to harvest, sell or slaughter cervids unless the permit has been suspended in accordance with administrative regulations promulgated by the department;***
  - Failure to come into compliance ***within sixty (60) days of the notice of violation*** may ***result in a citation and*** cause the captive cervids to be immediately seized by the department ***or the permit to be suspended; and*** ~~and~~
  - The individual whose cervids were seized ***or whose permit was suspended under paragraph (a) or (b) of this section*** may request an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the ***issuance of a citation or suspension of the permit*** ~~department's seizure~~ and may appeal the final decision to Franklin Circuit Court in accordance with KRS Chapter 13B. Pending the final outcome from all appeals, the seized cervids may be disposed of by the department without compensation to the owner.

➔Section 5. KRS 150.740 is amended to read as follows:

- (1) There shall be a ban on the importation of ~~live~~ members of the animal family Cervidae into the Commonwealth ***that have not been subject to a program of surveillance and identification for cervid chronic wasting disease (CWD) that meets or exceeds:***

- (a) *The requirements of the Kentucky Cervid CWD Surveillance and Identification (CCWDSI) Program set forth in this section and in administrative regulations promulgated by the Kentucky Department of Agriculture; and*
  - (b) *Any other health requirements as regulated by the Kentucky Department of Agriculture or the United States Department of Agriculture for cervids.*
- (2) *The Kentucky Department of Agriculture shall be responsible for authorizing importation of the members of the animal family Cervidae into the Commonwealth that have been subject to a program of surveillance and identification for cervid CWD that meets or exceeds:*
- (a) *The requirements of the Kentucky CCWDSI Program set forth in this section and in administrative regulations promulgated by the Kentucky Department of Agriculture; and*
  - (b) *Any other health requirements as regulated by the Kentucky Department of Agriculture or the United States Department of Agriculture for cervids.*
- (3) *Members of the animal family Cervidae shall not be eligible for importation into the Commonwealth unless the program of surveillance and identification for cervid CWD to which they have been subject:*
- (a) *Has been certified by the exporting state's state veterinarian or agency having jurisdiction over that state's surveillance and identification program;*
  - (b) *Has been approved by the Kentucky state veterinarian as meeting or exceeding the standards imposed under the Kentucky CCWDSI Program; and*
  - (c) *Meets, at minimum, the following requirements:*
    - 1. *The program shall require cervid owners to obtain identification and laboratory diagnosis from brain tissue as directed by the exporting state's state veterinarian or agency with jurisdiction for cervids twelve (12) months of age or greater that:*
      - a. *Display clinical signs of CWD;*
      - b. *Die, including deaths by slaughter or by hunting, including hunting on hunting preserves; or*
      - c. *Are ill or injured regardless of whether the illness or injury results in death; and*
    - 2. *The program shall require cervid owners to obtain cervids from herds that have been monitored for at least five (5) years and that have complied with the standards contained in the Kentucky CCWDSI Program.*
- (4) *Cervids originating from a state that has reported a confirmed case of CWD in wild or captive cervids shall not be imported into Kentucky until The United States Department of Agriculture approves:*
- (a) *Regulations that allow importation from those states; and*
  - (b) *A live test for CWD that is available for live testing of cervids.*
- (5) *Importation of members of the animal family Cervidae into the Commonwealth shall be consistent with this section and with administrative regulations promulgated by the Kentucky Department of Agriculture in cooperation with the Kentucky Department of Fish and Wildlife Resources.*
- (6) A person shall be guilty of a Class D felony upon conviction for violating this ~~section~~<sup>subsection</sup>. Upon conviction of a second violation of this ~~section~~<sup>subsection</sup> and in addition to all other penalties, a person shall be permanently ineligible for renewal of a captive cervid permit. On or before November 1 of each year, the Department of Fish and Wildlife Resources and the Department of Agriculture, Office of the State Veterinarian, respectively shall issue reports to the Interim Joint Committee on Agriculture and Natural Resources on the status of chronic wasting disease, and the reports may include the status of other animal or wildlife diseases in Kentucky and the United States. The reports shall be used for the purpose of determining the ~~continuing~~ need for **modifications to the** ~~the~~ <sup>a</sup> statutory ban on the importation of cervids into the Commonwealth ~~or a need for lifting the ban~~.
- (7)~~(2)~~ The Department of Fish and Wildlife Resources shall have the authority to immediately, and without compensation to the owner, seize captive cervids that have been imported into the Commonwealth contrary to

this section. The individual whose cervids were seized may request an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the department's seizure and may appeal the final decision to Franklin Circuit Court in accordance with KRS Chapter 13B. Pending the final outcome of all appeals, the seized cervids may be disposed of by the department without compensation to the owner.

(8)(3) The department shall have the authority to immediately, and without compensation to the owner, seize and destroy captive cervids that are in the process of being imported into the Commonwealth contrary to this section.

➔Section 6. KRS 246.295 is amended to read as follows:

- (1) The Department of Agriculture, in cooperation with the Department of Fish and Wildlife *Resources*, shall promulgate administrative regulations pertaining to health requirements, eradication of diseases, *importation*, and *unique individual* identification, *including visual identification tags*, of privately owned and farm raised cervids maintained for the production of meat and other products. *Nothing in this section shall limit the authority of the Department of Fish and Wildlife Resources to regulate the unique individual identification, including visual identification, of captive cervids that are not privately owned and farm-raised cervids maintained for the production of meat and other products.* The Department of Fish and Wildlife *Resources* in cooperation with the Department of Agriculture, shall promulgate administrative regulations pertaining to the ~~importation and~~ holding of cervids.
- (2) If any person imports a diseased animal into the Commonwealth in violation of the statutes and administrative regulations, then that person shall be responsible to the Department of Agriculture and the Department of Fish and Wildlife for all costs incurred in the investigation, response, and eradication of that disease.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 257 IS CREATED TO READ AS FOLLOWS:

*If any person holding captive cervids regulated under KRS 150.725 to 150.735 is determined in violation of a Kentucky statute or administrative regulation pertaining to the health requirements, eradication of diseases, importation, and identification of those cervids, then that person shall have sixty (60) days from when the violation was identified to come into compliance. During the sixty (60) day period, the cervids shall be subject to quarantine by the Kentucky Department of Agriculture. The permit holder may request an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the notice of violation and may appeal the final decision to Franklin Circuit Court in accordance with KRS Chapter 13B. If a final determination upholds the Kentucky Department of Agriculture, the permit holder's cervids may be disposed of by the department without compensation to the owner.*

Signed by the Governor March 20, 2009.

## CHAPTER 63

### (HJR 52)

A JOINT RESOLUTION directing the Cabinet for Health and Family Services to estimate the cost of care per month that must be borne by Kentucky taxpayers for a Kentucky Medicaid dialysis patient.

WHEREAS, the Commonwealth of Kentucky recognizes that healthy citizens are essential for strong communities to thrive; and

WHEREAS, End Stage Renal Disease (ESRD) is a state of permanent kidney failure, a condition that is irreversible and fatal without chronic life-long dialysis treatment or a kidney transplant; and

WHEREAS, Kentucky citizens receiving life-sustaining dialysis treatment are an extraordinarily vulnerable population with significant clinical needs that must receive dialysis treatment three or more times per week for sessions lasting up to five hours; and

WHEREAS, the Commonwealth ranks 20th in the United States in the prevalence rate of ESRD, with growth from 705 people in 1980 to 6,280 people with ESRD in 2006; and

WHEREAS, continued access to high quality care is of paramount importance to this unique population and their families; and

WHEREAS, many of those on dialysis and their families have paid premiums for years for the right to have their health care needs met when it matters most; and

WHEREAS, private insurers enjoy only a short-term obligation to beneficiaries who experience kidney failure since that is the only disease state where, regardless of age, Medicare assumes primary coverage after 33 months on dialysis; and

WHEREAS, private insurers are in effect subsidized by taxpayers since insurers' short-term obligation to beneficiaries on dialysis means that state and federal governments assume primary responsibility in the form of Medicare and Medicaid coverage after the 33 month coordination of benefits period; and

WHEREAS, despite their short-term responsibility for kidney care, insurers have taken actions that could result in increased drive times, disruption of continuity of care, interference with beneficiaries' ability to work and care for their families, and increased transportation and related costs; and

WHEREAS, the 2008 legislature brought focus to the issue on behalf of all Kentuckians to protect those on dialysis from being exposed to actions by insurers that were not consistent with their role in protecting patients' health;

NOW, THEREFORE,

***Be it resolved by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. The Cabinet for Health and Family Services is directed to estimate the cost of care per month that must be borne by Kentucky taxpayers for a Kentucky Medicaid dialysis patient. The Cabinet for Health and Family Services analysis must be made public no later than December 31, 2009.

➔Section 2. Those parties responsible for the delivery and financing of kidney care services are hereby expected to ensure that none of the above hardships are placed on Kentuckians and their families now and in the future. These parties are encouraged to come together to ensure that access to high quality kidney care services is honored and preserved.

➔Section 3. Insurers are strongly encouraged to honor the long-standing commitment to their policyholders to ensure continuity of care, irrespective of where they fall during their benefits period, similar to providers' demonstrated commitment to ensuring high-quality uninterrupted care irrespective of which payor funds the care.

➔Section 4. Failure by the interested private parties to reach resolution resulting in lasting protections for Kentuckians on dialysis will necessitate legislative review to preserve access to the life-saving care that population requires.

**Signed by the Governor March 20, 2009.**

## CHAPTER 64

(HB 53)

AN ACT relating to the titling of all-terrain vehicles.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 186A IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "all-terrain vehicle" has the same meaning as in KRS 189.010.*
- (2) *The titling of all-terrain vehicles shall be administered through the automated motor vehicle and trailer registration and titling system developed and implemented under KRS 186A.010.*
- (3) *The Transportation Cabinet, shall promulgate administrative regulations pursuant to KRS Chapter 13A requiring the procedures for titling of all-terrain vehicles to be consistent as far as practicable, with motor vehicle titling. These regulations may pertain but shall not be limited to the following:*
  - (a) *Conditions and characteristics of certificate of title forms;*
  - (b) *Comparison and identification of identification or serial numbers of all-terrain vehicles;*
  - (c) *Application of title;*
  - (d) *Processing of title applications;*
  - (e) *Form of certificate of title;*

- (f) *Notation of security interests on title;*
  - (g) *Title lien statements;*
  - (h) *Transfer of all-terrain vehicle ownership; and*
  - (i) *Duplicate certificate of title.*
- (4) ***The Transportation Cabinet shall ensure that the automated motor vehicle and trailer registration and titling system is capable of receiving and discharging a lien associated with the owner of an all-terrain vehicle. An all-terrain vehicle dealer shall not be responsible for the payment of a lien on an all-terrain vehicle which is received as trade-in or otherwise obtained by the dealer.***

➔Section 2. KRS 186A.070 is amended to read as follows:

- (1) Except as otherwise provided, the state resident owner of a vehicle as defined in KRS 186.010(8)(a), manufactured home as defined in KRS 186.650, or trailer which will not be operated upon the highways of this state shall within fifteen (15) days apply for and obtain a certificate of title in his name. He shall not, however, be required to obtain a certificate of registration until the vehicle, manufactured home, or trailer is to be operated upon the highways of this state.
- (2) ***On or after July 1, 2010, any state resident who purchases an all-terrain vehicle as defined in KRS 189.010 shall, apply for and obtain a certificate of title in the purchaser's name within fifteen (15) days of purchase. The owner of an all-terrain vehicle shall not be eligible to obtain a certificate of registration pursuant to KRS 186.020.***
- (3) ***On or after July 1, 2010, any state resident who owns an all-terrain vehicle and creates a security interest on that vehicle shall be required to obtain a certificate of title within fifteen (15) days of the creation of the security interest. The perfection and discharge of the security interest shall be governed by KRS 186A.190, 186A.193, 186A.195, 186A.200, 186A.205, 186A.210, and 186A.215. The owner of an all-terrain vehicle shall not be eligible to obtain a certificate of registration pursuant to KRS 186.020.***
- (4) ***An all-terrain vehicle shall not be operated upon the roadways of this state, except in accordance with KRS 189.515.***

➔Section 3. KRS 186A.130 is amended to read as follows:

There shall be paid for issuing and processing documents required by this chapter fees according to the following schedule:

- (1) Each application for a certificate of title shall be nine dollars (\$9), of which the county clerk shall retain six dollars (\$6) and the Transportation Cabinet shall receive three dollars (\$3).
- (2) Each application for a replacement or corrected certificate of title shall be six dollars (\$6), of which the county clerk shall retain four dollars (\$4) and the Transportation Cabinet shall receive two dollars (\$2). If a corrected certificate must be issued because of an error of the county clerk or the Department of Vehicle Regulation, there shall be no charge.
- (3) Each application for a speed title shall be twenty-five dollars (\$25), of which the county clerk shall retain five dollars (\$5) and the Transportation Cabinet shall receive twenty dollars (\$20).
- (4) (a) ***Each application for a certificate of title for an all-terrain vehicle shall be fifteen dollars (\$15), of which the county clerk shall retain six dollars (\$6) and the Transportation Cabinet shall receive nine dollars (\$9).***
- (b) ***Each application for a replacement or corrected certificate of title for an all-terrain vehicle shall be ten dollars (\$10), of which the county clerk shall retain four dollars (\$4) and the Transportation Cabinet shall receive six dollars (\$6). If a corrected certificate must be issued because of an error of the county clerk or the Department of Vehicle Regulation, there shall be no charge.***

➔Section 4. KRS 186A.245 is amended to read as follows:

- (1) If a certificate of title is lost, stolen, mutilated, or destroyed or becomes illegible, the owner or legal representative of the owner named in the certificate shall promptly make application to the county clerk for and may obtain a duplicate, upon furnishing information satisfactory to the Department of Vehicle Regulation. The duplicate certificate of title shall contain appropriate words or symbols to indicate that it is a duplicate. Each application for a duplicate certificate of title shall be six dollars (\$6), of which the county clerk shall retain four

dollars (\$4), and the Transportation Cabinet two dollars (\$2). *Each application for a duplicate certificate of title for an all-terrain vehicle shall be ten dollars (\$10), of which the county clerk shall retain four dollars (\$4) and the Transportation Cabinet shall receive six dollars (\$6).* It shall be mailed to the owner.

- (2) The Department of Vehicle Regulation shall make provisions for production and issuance of a duplicate title if update of information is requested. The provisions shall be generally consistent with the procedures for production and issuance of a certificate of title in the first instance as provided in this chapter.
- (3) A person recovering an original certificate of title for which a duplicate has been issued shall promptly surrender the original certificate to the Department of Vehicle Regulation.
- (4) Application for documents provided for by this section shall be made to the county clerk upon forms provided to him by the Department of Vehicle Regulation.

**Signed by the Governor March 24, 2009.**

## CHAPTER 65

### (HB 117)

AN ACT relating to retirement.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 61.565 is amended to read as follows:

- (1) Each employer participating in the State Police Retirement System as provided for in KRS 16.505 to 16.652, each employer participating in the County Employees Retirement System as provided for in KRS 78.510 to 78.852, and each employer participating in the Kentucky Employees Retirement System as provided for in KRS 61.510 to 61.705 shall contribute annually to the respective retirement system an amount equal to the percent, as computed under subsection (2) of this section, of the creditable compensation of its employees to be known as the "normal contributions," and an additional amount to be known as the "past service contribution" which shall be computed by amortizing the total unfunded past service liability over a period of thirty (30) years using the level-percentage-of-payroll method. This method shall be used beginning with the 1990 actuarial valuation. The initial thirty (30) year amortization period shall begin with the 1990 valuation. Any significant increase in past service liability due to benefit improvements after the 1990 valuation shall be amortized using the level-percentage-of-payroll amortization method over a separate thirty (30) year period commencing in the year of the actuarial valuation in which the benefit improvements are first reflected.
- (2) The normal contribution rate shall be determined by the entry age normal cost funding method. The past service liability shall be determined by actuarial method consistent with the methods prescribed for determining the normal contribution rate. Normal contributions and the past service liability contribution shall be determined on actuarial bases adopted by the board.
- (3) Normal contribution and the past service contribution rates shall be determined by the board on the basis of the annual actuarial valuation last preceding the July 1 of a new biennium. The board may amend contribution rates as of July 1 of the second year of a biennium, if it is determined on the basis of a subsequent actuarial valuation that amended contribution rates are necessary to satisfy the requirements of subsections (1) and (2) of this section.
- (4) The system shall advise each employer prior to the beginning of each biennium, or prior to July 1 of the second year of a biennium, of any change in the employer contribution rate. Based on the employer contribution rate, each employer shall include in the budget sufficient funds to pay the employer contributions as determined by the board under subsections (1) to (3) of this section.
- (5)
  - (a) It is the intent of the General Assembly to begin phasing into the full actuarially required contribution rates for the Kentucky Employees Retirement System and the State Police Retirement System.
  - (b) For the employer contribution rate for the Kentucky Employees Retirement System pertaining to nonhazardous employees, it is the intent of the General Assembly to work towards the goal of contributing the actuarially required employer contribution as follows:

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1. Forty-four percent (44%) of the actuarially required contribution for the fiscal year beginning July 1, 2010;
  2. Forty-eight percent (48%) of the actuarially required contribution for the fiscal year beginning July 1, 2011;
  3. Fifty-three percent (53%) of the actuarially required contribution for the fiscal year beginning July 1, 2012;
  4. Fifty-seven percent (57%) of the actuarially required contribution for the fiscal year beginning July 1, 2013;
  5. Sixty-one percent (61%) of the actuarially required contribution for the fiscal year beginning July 1, 2014;
  6. Sixty-five percent (65%) of the actuarially required contribution for the fiscal year beginning July 1, 2015;
  7. Sixty-nine percent (69%) of the actuarially required contribution for the fiscal year beginning July 1, 2016;
  8. Seventy-three percent (73%) of the actuarially required contribution for the fiscal year beginning July 1, 2017;
  9. Seventy-seven percent (77%) of the actuarially required contribution for the fiscal year beginning July 1, 2018;
  10. Eighty-one percent (81%) of the actuarially required contribution for the fiscal year beginning July 1, 2019;
  11. Eighty-five percent (85%) of the actuarially required contribution for the fiscal year beginning July 1, 2020;
  12. Eighty-nine percent (89%) of the actuarially required contribution for the fiscal year beginning July 1, 2021;
  13. Ninety-three percent (93%) of the actuarially required contribution for the fiscal year beginning July 1, 2022;
  14. Ninety-seven percent (97%) of the actuarially required contribution for the fiscal year beginning July 1, 2023; and
  15. One hundred percent (100%) of the actuarially required contribution for the fiscal year beginning July 1, 2024.
- (c) For the employer contribution rate for the Kentucky Employees Retirement System pertaining to hazardous employees, it is the intent of the General Assembly to work towards the goal of contributing the full actuarially required employer contribution as follows:
1. Seventy-six percent (76%) of the actuarially required contribution for the fiscal year beginning July 1, 2010;
  2. Seventy-nine percent (79%) of the actuarially required contribution for the fiscal year beginning July 1, 2011;
  3. Eighty-three percent (83%) of the actuarially required contribution for the fiscal year beginning July 1, 2012;
  4. Eighty-six percent (86%) of the actuarially required contribution for the fiscal year beginning July 1, 2013;
  5. Eighty-nine percent (89%) of the actuarially required contribution for the fiscal year beginning July 1, 2014;
  6. Ninety-two percent (92%) of the actuarially required contribution for the fiscal year beginning July 1, 2015;
  7. Ninety-five percent (95%) of the actuarially required contribution for the fiscal year beginning July 1, 2016;

8. Ninety-eight percent (98%) of the actuarially required contribution for the fiscal year beginning July 1, 2017; and
  9. One hundred percent (100%) of the actuarially required contribution for the fiscal year beginning July 1, 2018.
- (d) For the employer contribution rate for the State Police Retirement System, it is the intent of the General Assembly to work towards the goal of contributing the full actuarially required employer contribution as follows:
1. Sixty percent (60%) of the actuarially required contribution for the fiscal year beginning July 1, 2010;
  2. Sixty-five percent (65%) of the actuarially required contribution for the fiscal year beginning July 1, 2011;
  3. Seventy percent (70%) of the actuarially required contribution for the fiscal year beginning July 1, 2012;
  4. Seventy-five percent (75%) of the actuarially required contribution for the fiscal year beginning July 1, 2013;
  5. Eighty percent (80%) of the actuarially required contribution for the fiscal year beginning July 1, 2014;
  6. Eighty-five percent (85%) of the actuarially required contribution for the fiscal year beginning July 1, 2015;
  7. Ninety percent (90%) of the actuarially required contribution for the fiscal year beginning July 1, 2016;
  8. Ninety-five percent (95%) of the actuarially required contribution for the fiscal year beginning July 1, 2017;
  9. Ninety-eight percent (98%) of the actuarially required contribution for the fiscal year beginning July 1, 2018; and
  10. One hundred percent (100%) of the actuarially required contribution for the fiscal year beginning July 1, 2019.

- (6) *Notwithstanding any other provision of KRS Chapter 61 to the contrary, the board shall establish employer contribution rates for the County Employees Retirement System that will phase in to the full actuarially required contribution for the health insurance fund over a ten (10) year period using the 2007-2008 fiscal year employer contribution for the health insurance fund as a base employer rate and incrementally increasing the employer rate from fiscal year 2008-2009 through fiscal year 2017-2018.*

➔Section 2. The provisions of subsection (6) of Section 1 of this Act shall become effective for the contribution rates paid by employers participating in the County Employees Retirement System on or after July 1, 2009. The board of trustees of the Kentucky Retirement Systems shall take necessary action prior to July 1, 2009, to establish employer contribution rates for the County Employees Retirement System based upon the phase-in for the health insurance fund as required by subsection (6) of Section 1 of this Act.

**Signed by the Governor March 24, 2009.**

## CHAPTER 66

### (HB 129)

AN ACT relating to the sale of alcohol to minors.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 244.080 is amended to read as follows:

A retail licensee, *or the licensee's agent, servant, or employee* shall not sell, give away, or deliver any alcoholic beverages, or procure or permit any alcoholic beverages to be sold, given away, *possessed by*, or delivered to:

- (1) A minor, except that in any prosecution for selling alcoholic beverages to a minor it shall be an affirmative defense that the sale was induced by the use of false, fraudulent, or altered identification papers or other documents and that the appearance and character of the purchaser were such that his or her age could not have been ascertained by any other means and that the purchaser's appearance and character indicated strongly that he or she was of legal age to purchase alcoholic beverages. This evidence may be introduced either in mitigation of the charge or as a defense to the charge itself.
- (2) A person actually or apparently under the influence of alcoholic beverages.
- (3) Anyone known to the seller or server to be an habitual drunkard or any person known to the seller or server to have been convicted of drunkenness as many as three (3) times within the most recent twelve (12) month period.
- (4) Anyone known to the seller or server to have been convicted of any misdemeanor attributable directly or indirectly to the use of alcoholic beverages or anyone known to the seller or server to have been convicted of a felony.

➔Section 2. KRS 244.085 is amended to read as follows:

- (1) As used in KRS 244.083 and this section: "Premises" has the meaning it is given in KRS 241.010 and also means the place of business of a person licensed to sell alcoholic beverages including, in the case of drive-in establishments, the entire lot upon which the business establishment is situated.
- (2) A person under 21 years of age shall not enter any premises licensed for the sale of alcoholic beverages for the purpose of purchasing or receiving any alcoholic beverages.
- (3) A person under 21 years of age shall not possess for his or her own use or purchase or attempt to purchase or have another purchase for him or her any alcoholic beverages. No person shall aid or assist any person under 21 years of age in purchasing or having delivered or served to him or her any alcoholic beverages.
- (4) A person under 21 years of age shall not misrepresent his or her age for the purpose of inducing any licensee, or the licensee's agent, servant, or employee, to sell or serve any alcoholic beverages to the underage person.
- (5) A person under 21 years of age shall not use, or attempt to use any false, fraudulent, or altered identification card, paper, or any other document to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.
- (6) Except as provided in KRS 244.087 and 244.090, a licensee, or his or her agents, servants, or employees shall not permit any person under twenty-one (21) years of age to remain on any premises where alcoholic beverages are sold by the drink or consumed on the premises, unless:
  - (a) The usual and customary business of the establishment is a hotel, motel, restaurant, convention center, convention hotel complex, racetrack, simulcast facility, golf course, private club, park, fair, church, school, athletic complex, athletic arena, theater, *small farm winery*, distillery or brewery or winery tour, ~~establishment where prebooked concerts with advance ticket sales are held~~, convenience store, grocery store, drug store, or similar establishment. ~~For purposes of this paragraph, house bands, disc jockeys, and karaoke are not considered concerts~~;
  - (b) All alcoholic beverage inventory is kept in a separate, locked department at all times when minors are on the premises; ~~or~~
  - (c) Written approval has been granted by the office to allow minors on the premises until 10 p.m. where the sale of alcohol is incidental to a specific family or community event including, but not limited to, weddings, reunions, or festivals. The licensee's request shall be in writing and shall specifically describe the event for which approval is requested. The state director shall approve or deny the request in writing; *or*
  - (d) *The usual and customary business of the establishment is an entertainment facility where pre-booked concerts are held. For the purpose of this subsection, house bands, disc jockeys, and karaoke are not considered concerts. During the times minors are on the premises under this subsection the licensee shall:*
    1. *Maintain the responsibility of all ticket sales;*
    2. *Sell the concert tickets directly to the patron or have a contractual agreement with a vendor or promoter to sell the concert tickets for the licensee;*

3. *Maintain records of all gross concert ticket sales. The concert tickets shall have the name of the band(s) or performer(s) as well as the date of the concert;*
  4. *Permit minors to be in the area where the concert is taking place only during the time of the concert; and*
  5. *Prohibit minors on the premises until thirty (30) minutes prior to the concert and prohibit minors from remaining on the premises more than thirty (30) minutes after the concert performance has ended.*
- (7) Except as provided in subsection (6) of this section, a licensee or *the licensee's*~~his or her~~ agent, servant, or employee shall not allow any person under the age of twenty-one (21) to remain on any premises that sells alcoholic beverages by the package unless the underage person is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.
  - (8) Except as provided in subsection (6) of this section, a person under the age of twenty-one (21) shall not remain on any premises that sells alcoholic beverages by the package unless he or she is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.
  - (9) A violation of subsection (2), (3), (4), (5), or (8) of this section shall be deemed a status offense if committed by a person under the age of eighteen (18) and shall be under the jurisdiction of the juvenile session of the District Court or the family division of the Circuit Court, as appropriate.

**Signed by the Governor March 24, 2009.**

## CHAPTER 67

(HB 153)

AN ACT relating to milk.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

*It is the intent of Sections 1 to 6 of this Act to serve the public interest by creating a Kentucky Milk Commission within the Department of Agriculture. The purpose of the commission shall be to provide oversight in working to stabilize and improve the dairy industry in Kentucky from production to processing and distribution, and to assure that Kentucky consumers have an adequate supply of fresh wholesome milk and dairy products.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 6 of this Act, unless the context otherwise requires:*

- (1) *"Commission" means the Kentucky Milk Commission;*
- (2) *"Commissioner" means the Commissioner of Agriculture;*
- (3) *"Milk" means bovine lacteal secretion;*
- (4) *"Milk Processor" means any person who purchases, receives, or handles greater than three million (3,000,000) pounds of milk per month; and*
- (5) *"Milk Producer" means any person who produces milk for sale to milk processors.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

*The Kentucky Milk Commission is hereby established and shall consist of the following ten (10) members:*

- (1) *The commissioner or the commissioner's designee, who shall serve as chair;*
- (2) *A nonvoting representative of the Kentucky Dairy Development Council (KDDC) designated by the KDDC; and*

- (3) *Eight (8) members appointed by the Governor, who shall be residents of the state. The members shall be as follows:*
- (a) *Two (2) milk producers who are actively and principally engaged in dairy farming in Kentucky;*
  - (b) *One (1) milk processor or a designee of the processor;*
  - (c) *One (1) retailer;*
  - (d) *Two (2) consumers;*
  - (e) *One (1) employee representative of a milk marketing agency or dairy cooperative; and*
  - (f) *One (1) representative of the Cabinet for Health and Family Services who has experience in the administration of the Special Supplemental Nutrition Program for Women, Infants, and Children.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *The consumer members of the Kentucky Milk Commission established in Section 3 of this Act shall not, at the time of appointment or while serving as members of the commission, have a business or professional relationship or connection with or a financial interest in any milk producer, milk processor, or other person whose activities are subject to the jurisdiction of the commission;*
- (b) 1. *One (1) of the milk producer members shall be an independent milk producer who is not affiliated with a cooperative and is not associated with the milk processor representative;*
- 2. *The other milk producer member may be an independent or cooperative milk producer who is not affiliated with the milk processor representative or the cooperative representative;*
- (c) *Members of the commission shall adhere to the Executive Branch Code of Ethics pursuant to KRS Chapter 11A.*
- (2) *Appointed members of the commission shall serve for a term of four (4) years or until their successors are duly appointed and qualified, except that the initial terms shall be for one (1), two (2), three (3), and four (4) years so that terms of the members are staggered. The Governor shall determine the initial staggered terms of the members and shall appoint them by August 1, 2009.*
- (3) *A vacancy on the commission shall be filled for the remainder of the unexpired term in the same manner as the original appointment.*
- (4) *Appointed members of the commission shall be reimbursed for reasonable and necessary expenses incurred while engaged in carrying out the official duties of the commission.*
- (5) *The commission shall be attached to the Department of Agriculture for administrative oversight. The department may facilitate basic administrative functions; however, general administrative costs shall be borne by the dairy industry fund created in Section 6 of this Act.*
- (6) *The commission shall meet quarterly, or at the call of the chair or a majority of the voting members. The first meeting may be called by the chair and may convene by September 1, 2009.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to the availability of funds, the commission shall:*
  - (a) *Counsel with the Commissioner of Agriculture on matters pertaining to dairy production and the marketing and distribution of raw milk and Kentucky dairy products;*
  - (b) *Employ the appropriate experts, professionals, consultants, or others to assist members in carrying out duties of the commission;*
  - (c) *Undertake the research needed to determine how other states support their dairy farmers and dairy industry;*
  - (d) *Support investigations, studies, and scientific research to eliminate and alleviate specific problems affecting the dairy industry in the state;*
  - (e) *Participate in studies and investigations of problems particular to milk producers and milk processors in Kentucky; and*
  - (f) *Collect information to determine the actual cost of transporting milk used in Kentucky.*

- (2) *In addition to the responsibilities set out in subsection (1) of this section, the commission also shall:*
- (a) *Subject to the availability of funds, create a plan to assist Kentucky dairy farmers that would be equitable to all parties in the state dairy industry. The plan should examine and offer recommendations to improve, streamline, and enhance all aspects of the dairy production and distribution system in Kentucky;*
  - (b) *Submit the proposed plan to the Governor, Commissioner of Agriculture, and the Legislative Research Commission for their review;*
  - (c) *Publicize the plan in a way to allow individuals or entities the opportunity to offer comments;*
  - (d) *Promulgate administrative regulations necessary to carry out the plan, once reviewed and approved by the Governor, and the Commissioner of Agriculture, and finalized by the commission; and*
  - (e) *Monitor the progress of the plan and report on the progress annually to the Governor, the Commissioner of Agriculture, and the Legislative Research Commission.*
- (3) *The Kentucky Milk Commission established under Section 3 of this Act shall have no authority to promulgate administrative regulations to establish pricing on milk or milk products.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 260 IS CREATED TO READ AS FOLLOWS:

- (1) *The dairy industry fund is hereby created in the State Treasury as a trust and agency account to be administered by the commission for the purposes provided in this section.*
- (2) *Notwithstanding the provisions of KRS 45.229, any moneys accruing to this fund in any fiscal year, including state appropriations, gifts, grants, federal funds, interest, and any other funds both public and private, shall not lapse but shall be carried forward to the next fiscal year.*
- (3) *Any interest earnings of the fund shall become a part of the fund and shall not lapse.*
- (4) *Moneys received in the fund shall be used for carrying out the provisions of Sections 1 to 6 of this Act.*

Signed by the Governor March 24, 2009.

## CHAPTER 68

### (HB 173)

AN ACT relating to grain.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 251.620 is amended to read as follows:

- (1) There is hereby created the Kentucky Grain Insurance Corporation, a political subdivision, body politic and municipal corporation. The governing powers of the corporation shall be vested in a board of directors, composed of ten (10) members, including the Commissioner of the Department of Agriculture, who shall serve as president; the Attorney General, who shall serve as secretary; the State Treasurer, who shall serve as treasurer; the State Auditor; two (2) representatives from the Kentucky Feed and Grain Association selected by the Commissioner; two (2) representatives from the Kentucky Farm Bureau Federation selected by the Commissioner; and two (2) representatives from the Kentucky National Farmers Organization selected by the Commissioner. The Commissioner of Agriculture, Attorney General, State Treasurer, and State Auditor may each designate a person to represent him. The Kentucky Feed and Grain Association, the Kentucky Farm Bureau Federation, and the Kentucky National Farmers Organization shall each submit a list of four (4) names to the Commissioner from which the Commissioner shall make his appointments. The appointed members of the board shall serve ~~until June 30, 1992. Thereafter, the appointed members of the board shall serve~~ for a term of four (4) years or until their successor is appointed and qualified. Seven (7) members of the board shall constitute a quorum at any meeting of the board and the affirmative vote of seven (7) members shall be necessary for any action taken by the board at a meeting, except that a lesser number may adjourn a meeting ~~from time to time~~. Each member of the board shall be given at least five (5) days' written notice of the meetings. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board and corporation.

- (2) The corporation shall have the following powers, together with all powers incidental or necessary to the discharge *of its powers*~~thereof~~ in corporate form:
- (a) Perpetual succession by its corporate name as a corporate body;
  - (b) Alter and repeal bylaws, not inconsistent with the provisions of KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740, for the regulation and conduct of its affairs and business;
  - (c) Adopt and make use of a corporate seal and to alter the *seal*~~same~~ at pleasure;
  - (d) Avail itself of the services of the Department of Agriculture, the Attorney General, and the State Auditor when deemed necessary in the execution of the duties of the board;
  - (e) Receive funds assessed by the department under KRS 251.640;
  - (f) Administer the Kentucky Grain Insurance Fund by investing any funds of the corporation that the board may determine are not presently needed for any of its corporate purposes;
  - (g) Receive funds from the grain indemnity trust fund for deposit into the Kentucky grain insurance fund;
  - (h) Upon the request of the Commissioner, to make payment from the Kentucky grain insurance fund to the grain indemnity trust fund, when ~~a~~~~such~~ payment is necessary for the purpose of compensating claimants in accordance with the provisions of KRS 251.670; and
  - (i) *Any other powers necessary to carry out the provisions of this section*~~Have such powers as may be necessary or appropriate for the exercise of the powers herein specifically conferred upon the corporation~~ and all *other*~~such~~ incidental powers as are customary in corporations.
- (3) No director or other person acting on behalf of the corporation shall be personally liable for damage or injury resulting from the performance of his duties *for the corporation*~~hereunder~~.

➔Section 2. KRS 251.650 is amended to read as follows:

- (1) All assessments by the department *in accordance with*~~pursuant to~~ KRS 251.640 shall be held by the corporation in trust in the Kentucky grain insurance fund for carrying out the purposes of KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740. These funds shall be invested and reinvested in United States Treasury obligations at the discretion of the corporation, and the interest from these investments shall be deposited to the credit of the fund and shall be available for the same purposes as all other money deposited in the fund. The money in the fund shall not be available for any purpose other than the payment of claims *in accordance with*~~pursuant to~~ KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740, and shall not be transferred to any fund other than the grain indemnity trust fund, which is hereby created. This limiting and nontransferability provision shall not be severable from the whole of KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740; and if ~~the~~~~such~~ provision is held invalid, repealed, or substantially amended, KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740 shall immediately become invalid, and to this end, ~~the~~~~such~~ provision is declared to be nonseverable.
- (2) Notwithstanding the provisions of subsection (1) of this section, the board may authorize the investment of funds for the Kentucky grain insurance fund through the Kentucky Commission for Investments in any guaranteed security or other guaranteed investment recommended by the commission if the board determines ~~the~~~~such~~ recommendation would maximize the interest or income to the fund.
- (3) *Notwithstanding the provisions of subsection (1) of this section*, the board is authorized to pay from the interest or income produced by the investing of the Kentucky grain insurance fund:
  - (a) The ordinary management and investment fees assessed *in accordance with*~~pursuant to~~ statute or administrative regulation: *and*
  - (b) *A per diem of fifty dollars (\$50) to board members for each board meeting they attend, and reimbursement for other reasonable and necessary expenses incurred while engaged in carrying out the official duties of the board.*
- (4) Notwithstanding the provisions of subsection (1) of this section, the board may authorize the payment of legal fees, in actions brought against the Kentucky grain insurance fund, exclusively from the interest or income earned from the investment of the Kentucky grain insurance fund. All legal expenses incurred must be approved for payment by the board.

➔Section 3. KRS 251.720 is amended to read as follows:

- (1) Any person engaged in the business of buying grain from producers for resale, milling, or processing shall first procure a license from the department as required by the board before transacting business. The license shall expire on June 30 and shall be renewed annually by August 1. The annual license fee shall be based on the total annual volume handled as follows:
  - (a) From zero to five thousand nine hundred ninety-nine (5,999) bushels, seventy-five dollars (\$75);
  - (b) Six thousand (6,000) to ninety-nine thousand nine hundred ninety-nine (99,999) bushels, one hundred fifty dollars (\$150);
  - (c) One hundred thousand (100,000) to one million nine hundred ninety-nine thousand nine hundred ninety-nine (1,999,999) bushels, three hundred dollars (\$300);
  - (d) Two million (2,000,000) to five million nine hundred ninety-nine thousand nine hundred ninety-nine (5,999,999) bushels, four hundred fifty dollars (\$450);
  - (e) Six million (6,000,000) to nine million nine hundred ninety-nine thousand nine hundred ninety-nine (9,999,999) bushels, six hundred dollars (\$600); or
  - (f) Ten million (10,000,000) bushels and up, seven hundred fifty dollars (\$750).
- (2) The fee for each license shall be deposited in the Kentucky grain insurance fund as a regular contribution to be used for carrying out the provisions of KRS 251.410 to 251.510.
- (3) Every person licensed as a grain dealer shall file with the department a surety bond signed by the dealer as principal and by a responsible company authorized to execute surety bonds within the Commonwealth of Kentucky. A grain dealer may file with the department, in lieu of a surety bond, a certificate of deposit payable to the Commissioner as trustee or an irrevocable letter of credit on forms prescribed by the Commissioner. The principal amount of the certificate or letter of credit shall be the same as that required for a surety bond under this section, and the interest, if any, shall be made payable to the purchaser. The bond shall be a principal amount, to the nearest one thousand dollars (\$1,000), equal to ten percent (10%) of the aggregate dollar amount paid by the dealer to producers for grain purchased from them during the dealer's last completed fiscal year, or in the case of a dealer who has been engaged in business as a grain dealer for less than one (1) year or who has not previously been engaged as a grain dealer, ten percent (10%) of the estimated aggregate dollar amount to be paid by the dealer to producers for grain purchased from them during the next fiscal year. The bond shall not be less than twenty-five thousand dollars (\$25,000), nor more than one hundred thousand dollars (\$100,000), except as otherwise authorized by this section.
- (4) The Commissioner shall, when he questions a grain dealer's ability to pay producers for grain purchased, or when he determines that the grain dealer does not have a sufficient net worth to meet his financial obligations, require a grain dealer to post an additional bond in a dollar amount equal to the insufficiency or shall require an additional certificate of deposit or an irrevocable letter of credit equal to the insufficiency, as deemed appropriate by the Commissioner. Failure to post the additional bond or certificate of deposit or an irrevocable letter of credit constitutes grounds for suspension or revocation of a license issued under this section.
- (5) The bond or additional bond shall be made payable to the Commonwealth of Kentucky, with the Commissioner as trustee, and shall be conditioned on the grain dealer's faithful performance of his duties as a grain dealer and his compliance with this section. It shall be for the use and benefit of any producer from whom the grain dealer may purchase grain and who is not paid by the grain dealer, and shall not be cancelled, except upon at least sixty (60) days' notice in writing to the department. In no event shall the total aggregate liability of a surety exceed the face amount of its bond.
- (6) Any grain dealer who is of the opinion that his net worth and assets are sufficient to guarantee payment to producers for grain purchased by him may request the Commissioner to be relieved of the obligation of filing a bond in excess of the minimum bond of twenty-five thousand dollars (\$25,000). The request shall be accompanied by a financial statement of the applicant made within five (5) months of the date of the request, certified by a licensed public accountant, and any additional information concerning the applicant and his finances as the department may require. If the financial statement discloses a net worth of an amount equal to at least three (3) times the amount of the bond required by this section and the Commissioner is otherwise satisfied as to the financial ability and resources of the applicant, the Commissioner may waive that portion of the required bond in excess of twenty-five thousand dollars (\$25,000). However, in the case of a grain dealer

whose net worth is not equal to three (3) times the amount of bond required, the Commissioner may allow the grain dealer to waive, in one thousand dollar (\$1,000) increments, a portion of the bond required in excess of twenty-five thousand dollars (\$25,000). The percentage factor to be applied to the bond required in excess of twenty-five thousand dollars (\$25,000) shall be determined by dividing actual net worth by the net worth required to waive all bond in excess of twenty-five thousand dollars (\$25,000). If the result of this computation provides a percentage factor of eighty percent (80%) or greater, then that same percentage of the bond in excess of twenty-five thousand dollars (\$25,000) may be waived. The grain dealer shall then provide to the department a surety bond in the amount of twenty-five thousand dollars (\$25,000), plus any additional bond required by the Commissioner.

- (7) An incidental grain dealer whose total purchases of grain from producers during any fiscal year do not exceed an aggregate dollar amount of two hundred fifty thousand dollars (\$250,000) may satisfy the bonding requirements of this section by filing with the department a bond, certificate of deposit, or an irrevocable letter of credit at the rate of one thousand dollars (\$1,000) for each ten thousand dollars (\$10,000) or fraction of ten thousand dollars (\$10,000) with a minimum bond, certificate of deposit, or an irrevocable letter of credit of one thousand dollars (\$1,000), and a current financial statement.
- (8) Failure of a grain dealer to file a bond, certificate of deposit, or an irrevocable letter of credit and to keep the bond, certificate of deposit, or an irrevocable letter of credit in force or to maintain assets adequate to assure payment to producers for grain purchased from them shall be grounds for the suspension or revocation of a license issued under this section.
- (9) When the Commissioner has determined that a grain dealer has defaulted payment to producers for grain which he has purchased from them, the Commissioner shall determine, through appropriate legal procedures, the producers and the amount of defaulted payment, and, as trustee of the bond, shall immediately after the determination call for the dealer's surety bond or bonds to be paid to him for distribution to those producers who should receive the benefits. Should the defaulted amount owed producers be less than the principal amount of the bond or bonds, then the surety shall be obligated to pay only the amount of the default.
- (10) Any grain dealer who is also in the business of storing grain and is a warehouseman as defined in KRS 251.610 may be exempted from the licensing fee and bonding requirements of KRS 251.451 as long as his storage capacity and storage obligations are considered in formulating his grain dealer bond requirement.
- (11) The department may refuse to issue a license to any applicant or revoke the existing license of one who furnishes false or misleading information or conceals a material fact on the application or other supporting documents, has been convicted of fraud or deceptive practice, is currently adjudicated incompetent by a court of competent jurisdiction, fails to maintain an asset to liability ratio of one to one (1:1) or fails to post additional surety to cover the deficiency, or for other good cause shown. Any individual denied a license for these reasons shall be given written notice within thirty (30) days of receipt of application. Any applicant who is denied a license or has had his license revoked and feels he has been aggrieved may request a hearing by writing to the Commissioner of Agriculture. Upon request, a hearing shall be conducted in accordance with KRS Chapter 13B.
- (12) All applications for a grain dealer license shall be accompanied by a current financial statement, or an irrevocable letter of credit from a financial institution.
- (13)
  - (a) A grain dealer license shall become invalid upon the cessation of operations, change of partners in a partnership, change of corporate structure of a corporation, sale, or failure to remit license fees or fines. Licensed grain dealers shall immediately notify the department as to any changes and shall surrender the invalid license to the department. In the case of a successor, the successor shall apply for a new license.
  - (b) If there is a cessation of operations or sale, the department, when deemed appropriate, may cause an audit and examination to be made. In this case, all records required in this chapter shall be available to the department until the department is satisfied that all obligations have been met.
- (14) *In addition to the other provisions required by this section, any person who is engaged in the business of buying grain from producers and who purchases or takes title to grain valued at more than one million dollars (\$1,000,000) within a calendar month shall:*
  - (a) *Notify the department, in writing, by submitting a detailed position report outlining the:*
    1. *Type of grain;*
    2. *Quantity of each grain, in bushels;*

3. *Disposition of the grain, whether paid, forward price contracted, or other; and*
4. *Aggregate value of the grain purchased within the calendar month.*

*The report shall be submitted to the department within ten (10) days following the close of the calendar month. Failure to submit the report may result in the revocation of the person's license;*

- (b) *Upon request of the department, submit a balance sheet on a form provided by the department, current through the end of the calendar month. Additional surety shall be required, on a dollar-for-dollar basis, if the total value of purchases of grain exceeds the combined value of the licensee's net worth and existing surety. If the licensee has an asset-to-liability ratio falling below one to one (1:1) or has outstanding payables to producers, other than legitimate forward price contracted grain, over thirty (30) days due and exceeding one million dollars (\$1,000,000), the licensee's license shall be suspended until the deficit is corrected; and*
- (c) *Be placed on an accelerated audit schedule as determined by the department. If, in the determination of the department, the licensee cannot meet a minimum asset-to-liability ratio of one-half to one (0.5:1), the department shall revoke the license. The department shall also place liens on licensee assets up to the amount of indebtedness to producers. If the department determines the licensee is insolvent, the Commissioner shall have the power to seize assets up to the value of the indebtedness to producers.*

**Signed by the Governor March 24, 2009.**

## CHAPTER 69

### (HB 186)

AN ACT relating to real property taxation.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 132.0225 is amended to read as follows:

- (1) A taxing district that does not elect to attempt to set a rate that will produce more than four percent (4%) in additional revenue, exclusive of revenue from new property as defined in KRS 132.010, over the amount of revenue produced by the compensating tax rate as defined in KRS 132.010 shall establish a final tax rate within forty-five (45) days of the department's certification of the county's property tax roll. ***A city that does not elect to have city ad valorem taxes collected by the sheriff as provided in KRS 91A.070(1) shall be exempt from this deadline.*** Any *nonexempt* taxing district that fails to meet this deadline shall be required to use the compensating tax rate for that year's property tax bills.
- (2) A taxing district that elects to attempt to set a rate that will produce more than four percent (4%) in additional revenue, exclusive of revenue from new property as defined in KRS 132.010, over the amount of revenue produced by the compensating tax rate as defined in KRS 132.010 shall follow the provisions of KRS 132.017.

➔Section 2. KRS 132.285 is amended to read as follows:

- (1) Except as provided in subsection (3) of this section, any city may by ordinance elect to use the annual county assessment for property situated within such city as a basis of ad valorem tax levies ordered or approved by the legislative body of the city. Any city making such election shall notify the Department of Revenue and property valuation administrator prior to the next succeeding assessment to be used for city levies. In such event the assessment finally determined for county tax purposes shall serve as a basis of all city levies for the fiscal year commencing on or after the county assessment date. Each city which elects to use the county assessment shall annually appropriate and pay each fiscal year to the office of the property valuation administrator for deputy and other authorized personnel allowance, supplies, maps and equipment, and other authorized expenses of the office one-half of one cent (\$0.005) for each one hundred dollars (\$100) of assessment; provided, that sums paid shall not be less than two hundred fifty dollars (\$250), nor more than forty thousand dollars (\$40,000) in a city having an assessment subject to city tax of less than two billion dollars (\$2,000,000,000) or fifty thousand dollars (\$50,000) in a city having an assessment subject to city tax of more than two billion dollars (\$2,000,000,000). This allowance shall be based on the assessment as of the previous January 1. Each property valuation administrator shall file a claim with the city ***for the county assessment, which shall include the***

**recapitulation submitted to the city pursuant to subsection (2) of Section 3 of this Act.** ~~and~~ The city shall order payment in an amount not to exceed the appropriation authorized by this section. The property valuation administrator shall be required to account for all moneys paid to his office by the city and any funds unexpended by the close of each fiscal year shall carry over to the next fiscal year. Notwithstanding any statutory provisions to the contrary, the assessment dates for such city shall conform to the corresponding dates for the county, and such city may by ordinance establish additional financial and tax procedures that will enable it effectively to adopt the county assessment. The legislative body of any city adopting the county assessment may fix the time for levying the city tax rate, ~~fiscal year,~~ due and delinquency dates for taxes and any other dates that will enable it effectively to adopt the county assessment, notwithstanding any statutory provisions to the contrary. Any such city may, by ordinance, abolish any office connected with city assessment and equalization ~~except that in the case of a city assessor who is elected by the qualified voters of the city, the office may not be abolished before the end of the term of such assessor.~~ Any city which elects to use the county assessment shall have access to the assessment records as soon as completed and may obtain a copy of that portion of the records which represents the assessment of property within such city by additional payment of the cost thereof. Once any city elects to use the county assessment, such action cannot be revoked without notice to the Department of Revenue and the property valuation administrator six (6) months prior to the next date as of which property is assessed for state and county taxes.

- (2) In the event any omitted property is assessed by the property valuation administrator as provided by KRS 132.310 such assessment shall be considered as part of the assessment adopted by the city according to subsection (1) of this section.
- (3) For purposes of the levy and collection of ad valorem taxes on motor vehicles, cities shall use the assessment required to be made pursuant to KRS 132.487(5).
- (4) Notwithstanding the provisions of subsection (1) of this section, each city which elects to use the county assessment for ad valorem taxes levied for 1996 or subsequent years, and which used the county assessment for ad valorem taxes levied for 1995, shall appropriate and pay to the office of the property valuation administrator for the purposes set out in subsection (1) of this section an amount equal to the amount paid to the office of the property valuation administrator in 1995, or the amount required by the provisions of subsection (1) of this section, whichever is greater.

➔Section 3. KRS 133.040 is amended to read as follows:

- (1) The property valuation administrator shall complete the tax roll of all real property in his county before the first Monday in April of each year in accordance with law, and on or before that date he shall file with the department, on forms provided by the department, a recapitulation of all property assessed on the tax roll with his official certificate attached. The recapitulation shall show the assessment of property by type of property and by taxing district. Within fifteen (15) calendar days after receiving the recapitulation, the department shall direct the property valuation administrator to make any changes that are necessary to correct the assessment. The department shall preserve all recapitulations and schedules or a photographic facsimile for a period of seven (7) years from the assessment date.
- (2) At the time the property valuation administrator submits his property recapitulations to the department, he shall submit a copy of the recapitulations to the county judge/executive, the treasurer or chief officer of each special district in the county, the chief *executive* ~~administrative~~ officer of ~~an~~ *the* urban-county, *charter county, unified local government, or consolidated local government, the mayor of each city electing to use the annual county assessment pursuant to Section 2 of this Act,* and the superintendent of each local school district in his county.
- (3) Beginning with the 1995 assessment year, if the property valuation administrator has not submitted an acceptable recapitulation to the department by the first Monday in August, the department shall, within fifteen (15) days, conduct an investigation into the reasons for the failure. The department shall notify the property valuation administrator in writing of his right to appear before the commissioner or his designee during the investigation to provide an explanation for the failure to submit an acceptable recapitulation. At any time after the completion of an investigation resulting in a finding that the failure to submit an acceptable recapitulation was not reasonably justified, the department may declare an emergency assessment under the provisions of KRS 132.660.
- (4) If the commissioner determines upon the conclusion of the investigation that the failure to submit an acceptable recapitulation was not reasonably justified, the commissioner shall notify the property valuation administrator in writing of the department's findings, and of the department's intent to suspend the property valuation

administrator's compensation as of the date of the notification and until the date an acceptable recapitulation is submitted. The notification shall inform the property valuation administrator that the amount of compensation suspended under this subsection is subject to forfeiture as provided in subsection (5) of this section.

- (5) The property valuation administrator may, within ten (10) days of the date of notice provided for in subsection (4) of this section, request in writing a formal administrative hearing before a department hearing officer appointed by the commissioner. All hearings shall be conducted in accordance with KRS Chapter 13B. If in the recommended order:
  - (a) The hearing officer determines, and the commissioner agrees, that the failure to submit an acceptable recapitulation was not reasonably justified, the commissioner shall reaffirm the notice of forfeiture provided for in subsection (4) of this section and issue a final order in writing to the property valuation administrator.
  - (b) The hearing officer determines, and the commissioner agrees, that the failure to submit an acceptable recapitulation was reasonably justified, the commissioner shall notify the property valuation administrator in a final order, and compensation suspended under subsection (4) of this section shall be paid with interest at the tax interest rate defined in KRS 131.010(6).
- (6) If the property valuation administrator does not request in writing a formal administrative hearing within the time prescribed in subsection (5) of this section, the commissioner shall reaffirm the notice of forfeiture provided for in subsection (4) of this section and issue a final order in writing to the property valuation administrator.
- (7) The property valuation administrator may appeal the commissioner's final order in the same manner, and subject to the same provisions as set forth in KRS 132.370(7).
- (8) A property valuation administrator who fails to submit an acceptable recapitulation, within the times prescribed in subsection (3) of this section and after a previous finding that a prior year's failure to submit an acceptable recapitulation was determined to not be reasonably justified, shall be subject to removal from office as provided by KRS 132.370(4).

**Signed by the Governor March 24, 2009.**

## CHAPTER 70

### (HB 193)

AN ACT relating to auctioneers.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 330.010 is amended to read as follows:

***This chapter*** ~~[KRS 330.010 to 330.200]~~ shall be known and may be cited as the Auctioneers License Law of 1962.

➔Section 2. KRS 330.020 is amended to read as follows:

***As used in this chapter, unless the context otherwise requires:***

- (1) ***"Advertisement" means any written, oral, or electronic communication that:***
  - (a) ***Offers real or personal property or any combination thereof by or at auction; or***
  - (b) ***Promotes, solicits, induces, or offers to conduct an auction or to provide auction services;***
- (2) ***"Apprentice Auctioneer" means any person who is employed or supervised, directly or indirectly, by an auctioneer to deal or engage in any activity in subsection (6) of this section, excluding the authority to enter into an auction listing contract or to independently maintain an auction escrow account;***
- (3) ***"Auction" means any method of sale, lease, or exchange of real property, personal property, or any combination thereof, by means of competitively increasing or decreasing bids. Any sale, lease, or exchange of real property, personal property, or any combination thereof, advertised or presented in any way by or at auction, is an auction for the purposes of this chapter;***

- (4) (a) *"Auction house" means any commercial establishment at which personal property is regularly or customarily offered at auction, or at which personal property is customarily or regularly deposited and accepted, on consignment or otherwise, for sale at auction at a fixed location;*
- (b) *"Auction house" does not mean:*
1. *Those establishments which limit personal property sold in regard to thoroughbred horses or other horses or any interests therein, including but not limited to horse shares and seasons;*
  2. *Tobacco and fixed-base livestock markets regulated by the United States Department of Agriculture; or*
  3. *Fixed-base motor vehicle markets regulated by the Kentucky Motor Vehicle Commission pursuant to KRS Chapter 190;*
- (5) *"Auction house operator" means the individual principally or ultimately responsible for the operation of an auction house, or in whose principal interest the establishment is operated. The auction house operator is responsible for retaining a licensed auctioneer to call bids at all auctions at the auction house;*
- (6) *"Auctioneer" or "principal auctioneer" means any person who offers, solicits, negotiates, or attempts to offer, solicit, or negotiate an auction listing contract, sale, lease, or exchange of real property, personal property, or any other item of value, or any combination thereof, which may lawfully be kept or offered for sale, lease, or exchange, or any combination thereof, by or at auction, or who offers the same at auction and who is allowed to supervise and accepts the responsibility of sponsoring one (1) or more apprentice auctioneers;*
- (7) *"Board" means the Board of Auctioneers;*
- (8) *"Limited livestock auctioneer" means any auctioneer whose professional activities are limited to the calling of bids at the sale of livestock at fixed-based livestock yards operating under the control and guidance of the United States Department of Agriculture;*
- (9) *"Personal property" means any tangible or intangible property, goods, services, chattels, merchandise, commodities, or any item of value in any form or type, other than real property, which may be lawfully kept or offered for sale, exchange, or lease;*
- (10) *"Person" means any individual, association, partnership, corporation, limited liability company, or other business entity, including any officer, director, or employee thereof;*
- (11) *"Real property" means real estate in its ordinary meaning, including but not limited to timeshares, options, leaseholds, and other interests less than leaseholds of any form or type which may be lawfully kept or offered for sale, exchange, or lease; and*
- (12) *"Sealed bid auction" means a sealed bidding procedure which incorporates or allows for any competitive increasing or decreasing of bids after the opening of sealed bids. A "sealed bid auction" is an auction subject to the provisions of this chapter.*

~~{As used in this chapter, unless the context otherwise requires:~~

- ~~(1) "Apprentice auctioneer" means any person who is employed or supervised, directly or indirectly, by an auctioneer to deal or engage in any activity in subsection (2);~~
- ~~(2) "Auctioneer" or "principal auctioneer" means any person who offers, negotiates, or attempts to negotiate a listing contract, sale, purchase, or exchange of goods, chattels, merchandise, real or personal property, or of any other commodity which may lawfully be kept or offered for sale by or at public auction, or who sells the same at auction and who is allowed to supervise one (1) or more apprentice auctioneers;~~
- ~~(3) "Board" means the Board of Auctioneers;~~
- ~~(4) "Goods" means any chattels, goods, merchandise, real or personal property, or commodities of any form or type which may be lawfully kept or offered for sale;~~
- ~~(5) "Persons" includes individuals, associations, partnerships, and corporations, and the word "persons" shall also include the officers, directors, and employees of a corporation;~~
- ~~(6) "Auction house" means any commercial establishment at which goods are regularly or customarily offered for sale or sold at public auction, or at which goods are customarily or regularly deposited and accepted, on~~

consignment or otherwise, for sale at public auction at a fixed location, except those establishments which limit goods sold to thoroughbred horses or any interests therein, including, but not limited to, shares and seasons, or tobacco and certified fixed base livestock markets;

- (7) ~~"Auction house operator" means the individual principally or ultimately responsible for the operation of an auction house, or in whose principal interest the establishment is operated;~~
- (8) ~~"Livestock auctioneer" means any auctioneer whose professional activities are limited to the sale of livestock at fixed based livestock yards operating under the control and guidance of the United States of America pursuant to the Federal Packers and Stockyards Act; and~~
- (9) ~~"Tobacco auctioneer" means any auctioneer whose professional activities are limited to the sale of tobacco at fixed based tobacco warehouses operating under the control and guidance of the United States of America through its Department of Agriculture.~~

➔Section 3. KRS 330.030 is amended to read as follows:

- (1) ~~{On and after July 1, 1962,}It is [shall be]~~ unlawful for any person to ***advertise or*** act as an auctioneer or apprentice auctioneer~~, or to advertise or to assume to act as either~~ within the Commonwealth, ***or advertise or act as an auctioneer or apprentice auctioneer of real or personal property located within the Commonwealth,*** without a license issued by the ~~board~~***Board of Auctioneers***.
- (2) ***It is unlawful for any person to advertise or act as a limited livestock auctioneer within the Commonwealth without a license issued by the board.***
- (3) ***It is unlawful for any person to advertise or act as an auction house operator within the Commonwealth without a license issued by the board.***
- (a) ***An auction house operator shall be a licensed auctioneer or apprentice auctioneer if he or she acts as an auctioneer or apprentice auctioneer. If licensed as an auctioneer, an auction house operator license shall not be required.***
- (b) ***If an auction house operator conducts and operates more than one (1) auction house, a license shall be issued for each location, and the initial and renewal fees shall be applicable.***

➔Section 4. KRS 330.040 is amended to read as follows:

- (1) KRS 330.030 shall not apply to:
- (a) ~~An~~***Any*** ~~[Sales at]~~ auction conducted by or under the direction of any public authority or pursuant to any judicial order or decree, or to any sale required by law to be at auction;~~[-]~~
- (b) ~~An~~***Any*** ~~[Sales at]~~ auction of any real or personal property conducted exclusively by an individual who personally owns such real or personal property and who did not acquire such real or personal property for resale. This ~~paragraph~~***subsection*** is applicable only to individuals. It does not apply to any other ~~"person~~***person***~~]" as defined in Section 2 of this Act~~***[KRS 330.020(5)]***, nor does it apply to any officer, director, or employee thereof ***when engaged in any duties associated with those capacities.***
- (c) Any ~~person~~***resident or nonresident crier or auctioneer*** who ~~[simply] calls [for] bids at [and strikes the bargain or who cries or acts as auctioneer in]~~ the sale of livestock owned and ~~offered~~***offered***~~[sold]~~ at auction by 4-H Clubs or FFA Clubs or club members, or by any university operated by the Commonwealth of Kentucky;~~[-]~~
- (d) ***An auction***~~[A sale]~~ conducted by or on behalf of any political party, church, or charitable ***organization,*** corporation, or association if:
1. The individual conducting the sale receives no compensation and does not, by advertising or otherwise, ***present himself or herself***~~[hold himself out]~~ as ***a licensed auctioneer;***~~[being available to engage in the sale of goods or real estate at auction.]~~
  2. ***All real or personal property is donated and not consigned; and***
  3. ***One hundred percent (100%) of the net proceeds of the auction are donated to the political party, church, or charitable organization, corporation, or association; or***
- (e) ***A student who:***

1. *Is calling bids for a maximum of twenty (20) items or lots of personal property during a twenty-four (24) hour period at an auction;*
2. *Is under the direct supervision of a person who is both the student's instructor from a board-approved auction education provider and a licensed auctioneer; and*
3. *Receives no compensation and does not, by advertising or otherwise, present himself or herself as being a licensed auctioneer.*

*The student and the supervising auctioneer instructor may both be liable for the student's auction-related activities.*

- (2) Notwithstanding the provisions of this section, a ~~no~~ licensee ~~under this chapter~~ shall **not** be ~~exempt~~ ~~exempted~~ from any ~~of the~~ provisions of this chapter in connection with or by reason of his participation in any sale excepted under this section.

➔ Section 5. KRS 330.050 is amended to read as follows:

- (1) There is hereby created a Board of Auctioneers. The Governor shall appoint a board consisting of five (5) members, all of whom immediately prior to the date of their appointment have been residents of the Commonwealth of Kentucky for five (5) years, and four (4) whose vocation for a period of at least five (5) years has been that of an auctioneer. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. The term of the members of the board shall be for three (3) years and until their successors are appointed and qualified. Members to fill vacancies shall be appointed for the unexpired term.
- (2) At no time shall there be more than **two (2) auctioneer** ~~three (3)~~ members of the same political ~~party~~ ~~faith~~ on the board. Whenever there is **an auctioneer** ~~fa~~ vacancy on the board, the Kentucky Auctioneer Association shall recommend to the Governor at least three (3) names for each auctioneer vacancy, and such appointment or appointments shall be made from the recommendations of the association.
- (3) The board, immediately upon qualification of the member appointed in each year, shall organize by selecting from its members a chairman.
- (4) Each member of the board shall receive the sum of twelve thousand dollars (\$12,000) per year, payable twice monthly, and reimbursement for actual and necessary expenses incurred in the performance of official duties.
- (5) The board shall have full authority to employ, and discharge, any personnel, including counsel, as it may deem necessary to efficiently administer and enforce the provisions of this chapter, and it shall outline the duties and fix the compensation of such persons, provided that compensation shall be comparable to the salaries paid other state employees, if any, which the board may deem to be doing similar work. The board shall obtain office space, furniture, stationery, and any other proper supplies and conveniences reasonably necessary to carry out the provisions of this chapter. If any items deemed to be reasonably necessary by or which are required by the board are available through vendors under contract with the Commonwealth of Kentucky at less cost than if obtained otherwise, then the items shall be acquired pursuant to the contract. The board shall have full authority to obtain for its members, staff, and employees complete insurance coverage, including, but not limited to, liability and errors and omissions insurance, so long as ~~the~~ ~~such~~ insurance concerns the business of the board.
- (6) All fees and charges collected by the board under the provisions of this chapter shall be paid into the State Treasury through the Finance and Administration Cabinet and shall be credited to an agency fund account for the Board of Auctioneers under the provisions of KRS 45.253 and shall be withdrawn or expended as provided in that section, if such payment, credit, withdrawal, or expense provisions do not conflict with any provision of this chapter.
  - (a) *The board may establish and collect reasonable fees relating to the administration and enforcement of this chapter for application or other processing costs, on-line service, continuing education provider services, copy, and mailing services, or other fees necessary to offset the licensing and processing costs.*
  - (b) The total expenses for all purposes and obligations of the board shall not exceed the total fees, charges, fines, penalties, and other income imposed under the provisions of this chapter and paid into the state treasury.

- (c) The board shall be financially self-sustaining, and if funds permit it may underwrite, within its financial limitations, educational programs for the enlightenment and benefit of all licensees who have paid fees pursuant to this chapter.
- (7) The board shall ***maintain*** annually ~~publish~~ a list of the names and addresses of all ***licensees regulated by the board*** ~~auctioneers, apprentice auctioneers, livestock auctioneers, tobacco auctioneers, and auction house operators licensed by it pursuant to this chapter~~. This list shall also contain the names of all persons whose licenses have been suspended or revoked within the preceding year, as well as any other information relative to the enforcement of the provisions of this chapter that the board may deem of interest to the public.
- (8) The board may ~~from time to time~~ promulgate ~~necessary~~ administrative regulations ***in accordance with KRS Chapter 13A as required to fulfill the duties and functions assigned to the board by this chapter.***
- (9) ***A board member shall be automatically removed from the board and a vacancy shall occur when:***
- (a) ***An auctioneer member of the board ceases to be a licensed auctioneer;***
  - (b) ***A nonlicensed member of the board acquires a license regulated by the board;***
  - (c) ***A board member enters a plea of guilty, an Alford plea, or a plea of no contest, or has been convicted of any felony, and the time for appeal has passed or the judgment of conviction has been finally affirmed on appeal; or***
  - (d) ***A board member ceases to be a resident of the Commonwealth of Kentucky.***

➔Section 6. KRS 330.060 is amended to read as follows:

- (1) ***Every applicant for licensure shall be at least eighteen (18) years of age, show proof of a high school diploma or equivalent, and, within the preceding five (5) years, shall not have committed any act that constitutes grounds for license suspension or revocation under this chapter.***
- (a) ***The board may waive the high school diploma or equivalent requirement for an apprentice, licensed prior to 1985, applying for an auctioneer license.***
  - (b) Any ~~license~~ ~~licenses~~ issued pursuant to this chapter shall be granted only to ***a person*** ~~persons who are~~ found to be of good repute, trustworthy, and competent to transact the business for which the license was granted in ~~such~~ a manner ***requisite*** ~~as~~ to ***safeguarding*** ~~safeguard~~ the interest of the public.
  - (c) ***Effective July 1, 2010, an applicant for an apprentice auctioneer license shall have successfully completed at least eighty (80) hours of approved classroom instruction from a board-approved auction education provider.***
  - (d) ***The board may waive the eighty (80) hours of approved classroom instruction requirement if the applicant demonstrates sufficient previous auction experience and competency by affidavit or other evidence as required by the board.***
- (2) The board is authorized to require information from every applicant to determine the applicant's honesty and truthfulness.
- (3) ***Every applicant shall successfully complete*** ~~In addition to proof of honesty, truthfulness, and good reputation,~~ an examination, conducted by the board or its authorized representative ~~shall be held four (4) times each year, and an examination fee of seventy five dollars (\$75) shall be collected from each applicant for apprentice auctioneer and an examination fee of one hundred dollars (\$100) shall be collected from each applicant for auctioneer and from each applicant for livestock auctioneer, tobacco auctioneer, and auction house operator~~.

***Every application for examination shall be submitted on board-prepared forms, and each applicant shall furnish pertinent background data as outlined on the forms.***

- (a) ***To defray the cost of administration of the examination, the board shall require each applicant to remit an examination fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A.***
- (b) Examination fees shall be nonrefundable.

- (c) *If the applicant is unable to attend the scheduled exam, the examination fee shall be deferred to the next scheduled administration of the examination.*
- (d) *Upon successful completion of the examination, the applicant shall apply for initial licensure within forty-five (45) days of receiving notice of successfully completing the examination ~~and shall defray the expenses of processing the application and of conducting the examination. The examinations for auctioneer and apprentice auctioneer shall include questions on ethics, reading, writing, spelling, mathematics, elementary principles of land economics, and a general knowledge of the statutes of Kentucky relating to deeds, mortgages, contracts of sale, agency, leases, auctions, brokerage, and the provisions of this chapter. The examination for an auctioneer's license shall be of a more exacting nature and scope than the examination for an apprentice auctioneer. The examination for auction house operator license shall include those areas of knowledge which, in the discretion of the board, are appropriate to those seeking to operate auction houses. The examinations for livestock auctioneer and tobacco auctioneer shall include those areas of knowledge which, in the discretion of the board, are appropriate to those seeking a professional license to operate in those limited fields.~~*
- (e) *The examination shall be of the scope and wording sufficient in the judgment of the board to establish the competency of the applicant to act as an auctioneer or other licensee regulated by the board.*
- (4) *If a ~~How~~ever, no examination shall be required for the renewal of any present or future license, unless such license has been revoked, suspended, or is allowed to expire without renewal. ~~In any of these cases,~~ the board may ~~in its discretion,~~ require the applicant to ~~take and~~ pass the written examination *or complete some form of board-approved auction education* before a ~~new~~ license may be issued.*
- (5) *If a license has not been renewed within six (6) months of the expiration date, the board shall require a person to successfully complete the written examination before a license is issued.*
- (6) *In addition, every nonresident applicant shall file an irrevocable consent that actions may be commenced against the applicant in any court of competent jurisdiction in the Commonwealth of Kentucky, by the service of any summons, process, or pleadings authorized by law on the authorized representative of the board. The consent shall stipulate and agree that the service of any summons, process, or pleadings on the authorized representative shall be taken and held in all courts to be as valid and binding as if actual service had been made upon the applicant in Kentucky. In case any summons, process, or pleadings are served upon the authorized representative of the board, it shall be by duplicate copies, one (1) of which shall be retained in the office of the board, and the other immediately forwarded by certified mail, return receipt requested, to the last known business address of the applicant against whom the summons, process, or pleadings are directed.*

➔Section 7. KRS 330.070 is amended to read as follows:

- (1) *An apprentice auctioneer applying for an auctioneer license shall, ~~In addition to the other qualifications provided for by this chapter, every applicant for any license issued by the board shall be at least eighteen (18) years of age and hold a high school diploma or equivalent. In addition, but~~ subject to the provisions of *Section 6 of this Act:**
- (a) *~~{KRS 330.090, an applicant for an auctioneer's license shall }~~Possess a current Kentucky apprentice auctioneer~~{auctioneer's}~~ license;*
- (b) *Serve an~~{and shall have served a bona fide}~~ apprenticeship for a period of two (2) years as an apprentice auctioneer in Kentucky; and*
- (c) *Submit a statement to the board, signed by the principal auctioneer, verifying that the applicant has participated in at least ten (10) auctions during the twenty-four (24) month period prior to application ~~, provided that any applicant for auctioneer's license whose apprentice license was granted prior to August 1, 1992, shall be required to serve an apprenticeship of but one (1) year.~~*
- (2) *An apprentice auctioneer with an original license issued prior to June 30, 2010, shall be required to successfully complete the auctioneer examination.*
- (3) *Effective July 1, 2010, an applicant for an apprentice auctioneer license shall be required to successfully complete the auctioneer examination prior to being issued an apprentice license. No further examination shall be required prior to applying for an auctioneer license.*

- (a) *An apprentice auctioneer shall apply for an auctioneer license after completing the required two (2) year apprenticeship and within five (5) years of being issued an apprentice license.*
- (b) *If a licensed apprentice auctioneer does not apply for an auctioneer license within five (5) years of receiving an apprentice license, the apprentice license shall not be renewed.*
- (c) *This subsection shall not apply to an apprentice auctioneer licensed prior to June 30, 2010.*
- (4) *If an applicant for an auctioneer license resides in a state which does not have a current reciprocity agreement with the board, the board may waive the eighty (80) hour education requirement or the apprenticeship requirement, or both, if the applicant demonstrates sufficient previous auction experience and competency by affidavit or by other evidence as required by the board.*
- (5) An applicant for an ~~auctioneer~~~~[auctioneer's]~~ license who has previously held an ~~auctioneer~~~~[auctioneer's]~~ license which has been revoked, suspended, or which has expired without renewal may request, and the board may grant, a waiver of the requirement of possession of a current apprentice license.
- (6)~~(2)~~ Every application for a license *issued by the board*~~[, whether as an auctioneer, apprentice auctioneer, livestock auctioneer, tobacco auctioneer, or auction house operator,]~~ shall be submitted on forms prepared by the board. Each applicant shall furnish pertinent background data as outlined on those forms.
- (7) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish an initial license fee and annual renewal license fee, neither of which shall exceed one hundred fifty dollars (\$150)*~~(3) — The issuance fee for each license issued pursuant to this chapter shall be not more than one hundred dollars (\$100) and the annual renewal fee for each license shall be not more than one hundred dollars (\$100).~~
- (a) All licenses shall expire on *the thirtieth day of June*~~[thirtieth of each year].~~
- (b) *Each license shall be renewed on or before the expiration date.*
- (c) *In addition to the renewal fee, a late fee shall be established by administrative regulations promulgated by the board on each license renewed within six (6) months after the expiration date.*
- (d) In the absence of any reason or condition which might warrant the refusal of ~~the~~ renewing a ~~of the~~ license, and upon timely receipt of the *renewal form*~~[written request of the applicant]~~ and the annual fee~~[therefor]~~, the board shall issue a ~~new~~ license for *the*~~[each]~~ ensuing year.
- (8) (a)~~(4)~~~~Beginning with the renewal of licenses expiring on or after June 30, 1993,~~ The board may require as a condition precedent to the renewal of any license, that *each licensee*~~[all licensees]~~ complete continuing~~[auction]~~ education up to ten (10) hours per *license* year~~[per licensee]~~. The board may impose different continuing~~[auction]~~ education requirements~~[, or none,]~~ upon different classifications of *licenses*~~[licensees]~~ under this chapter. The continuing~~[auction]~~ education requirements~~[provided for]~~ in this subsection shall not apply to those~~[individual]~~ auctioneers licensed prior to January 1, 1980.
- (b) *A licensee who has not completed the required continuing education may, within the time period set forth in subsections (6) and (7) of this section, remit a fee established by administrative regulations promulgated by the board with the applicable renewal fees, and the continuing education reporting requirement shall be deferred to the next annual renewal. If the licensee fails to meet the continuing education requirement for the next annual renewal, the licensee shall successfully complete the examination before renewal of his or her license.*
- (c) *The board may require all licensees to complete a six (6) hour board-approved core course once every four (4) years, that includes the core subjects of Kentucky auction statutes and regulations, ethics, and any other subject matter deemed appropriate by the board.*
- (9)~~(5)~~ The board shall prepare and deliver to each licensee a *pocket* license~~[and pocket card]~~. The ~~license and~~ *pocket license*~~[card]~~ of the apprentice auctioneer shall contain the name and address of his or her principal auctioneer. *The board shall also prepare and deliver a license to each auction house operator.*
- (a) Auction house operators shall display their licenses conspicuously and at all times in *the auction house identified on the license*~~[their place of business. All other licenses shall be kept on file in the licensee's place of business].~~

- (b) All licensees shall carry their pocket *licenses*~~[cards with them]~~ when performing auctioneering tasks, to be shown upon request.
- (c) *A license or pocket license shall*~~[Lost licenses or pocket cards will each]~~ be replaced upon *the request of*~~[request by]~~ the licensee and payment of a replacement fee *established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A*~~[of fifteen dollars (\$15)]~~.
- ~~(10)(6)~~ When ~~an~~~~[any]~~ apprentice auctioneer is discharged or *voluntarily* terminates employment with the auctioneer for any reason:~~;~~
- (a) It shall be the immediate duty of the principal auctioneer to deliver~~[or mail by certified mail, return receipt requested,]~~ to the board *a written release*~~[the license]~~ of the apprentice auctioneer; *and*
- (b) *The apprentice auctioneer shall affiliate with a principal auctioneer within thirty (30) days by submitting to the board an affiliation letter signed by the new principal auctioneer and a fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A.*
- ~~An~~~~[It shall be unlawful for any]~~ apprentice auctioneer *shall not*~~[to]~~ perform any of the acts *regulated*~~[contemplated]~~ by this chapter *until receiving*~~[either directly or indirectly, under authority of his or her license, until the apprentice auctioneer receives]~~ a new license bearing a new principal auctioneer's name and address. ~~[No more than one (1) license shall be issued to any apprentice auctioneer for the same period of time.]~~
- ~~(11)(7)~~ A licensee may place his or her license in escrow with the board if the licensee does not engage in any *board-regulated* auctioneering activity~~[or auction house operations]~~ and continues to pay the annual renewal *license fee*~~[fees during the term of escrow]~~.
- (a) For each year the license is in escrow, a licensee shall be exempt from the contribution to the auctioneer's education, research, and recovery fund~~[described in KRS 330.192(1)(b)]~~ and the continuing education requirement~~[described in subsection (4) of this section]~~.
- (b) To reactivate a license in escrow, the licensee *shall*~~[must]~~ meet the current year's continuing education requirement ~~[described in subsection (4) of this section]~~ and pay a reactivation fee *and the annual renewal recovery fee, both of which shall be established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A*~~[of one hundred dollars (\$100)]~~.
- ~~(12)(8)~~ Notice in writing shall be given to the board by each licensee of any change of principal business location or ~~of~~ residence address within ten (10) days of *the*~~[such]~~ change, *and*~~[In the event of change of business location address,]~~ the board shall issue *an updated*~~[a new]~~ license for the unexpired period. *The board may fine, suspend, or revoke the license of a licensee who does not notify the board of a change of address within ten (10) days*~~[A change of business location without notification to the board within ten (10) days shall automatically suspend or revoke the license of such licensee, as may be ordered in the discretion of the board]~~. Changing a business ~~location~~~~[location]~~ or a residence *address*~~[location]~~ on its records shall entitle the board to collect *a fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A*~~[ten dollars (\$10)]~~.

➔ Section 8. KRS 330.095 is amended to read as follows:

- (1) *An individual holding an auctioneer license from the proper authority of a state, territory, or possession of the United States of America or the District of Columbia that has licensing requirements equal to or substantially equivalent to the requirements in this state, and where reciprocal licensing privileges are granted to residents of this state, may obtain an auctioneer license without examination and pre-license education if:*
- (a) *The board has entered into a valid reciprocal agreement with the proper authority of the state, territory, or possession of the United States of America or the District of Columbia from which the nonresident applicant has a valid license;*
- (b) *The applicant submits to the board the completed reciprocal application, including the irrevocable consent described in Section 6 of this Act, and the license and exam verification from a reciprocal state; and*
- (c) *The applicant pays the applicable reciprocal fee:*

1. *The initial reciprocal fee shall be the greater of:*
    - a. *The sum total of the initial license and recovery fees charged by the applicant's reciprocal state to a Kentucky resident for an initial reciprocal license; or*
    - b. *The sum total of the current initial license and recovery fees assessed by the board to a nonreciprocal Kentucky licensee; and*
  2. *The renewal reciprocal fee shall be the greater of:*
    - a. *The sum total of the renewal license and recovery fees charged by the applicant's reciprocal state to a Kentucky resident for a renewal reciprocal license; or*
    - b. *The sum total of the current renewal license and recovery fees assessed by the board to a nonreciprocal Kentucky licensee.*
- (2) *If a licensee is issued a Kentucky reciprocal license via a jurisdiction that has continuing education requirements, the Kentucky reciprocal licensee shall be exempt from reporting continuing education. If a licensee is issued a Kentucky reciprocal license via a jurisdiction that does not have a continuing education requirement, the Kentucky reciprocal licensee shall report continuing education pursuant to Section 7 of this Act.*
- (3) *Disciplinary sanctions against a reciprocal licensee imposed by any licensure jurisdiction may be grounds for disciplinary action by the board.*

~~{Any nonresident applicant who is a licensee in and who resides in another state or country where the qualifications prescribed at the time of licensing were, in the opinion of the board, equal to those prescribed in the Commonwealth of Kentucky at the date of application, and where reciprocal licensing privileges satisfactory to the board are granted to licensees and residents of the Commonwealth, may be granted a license without an examination. In addition to the fees set out in KRS 330.090, a reciprocal licensee fee shall be collected from each applicant meeting the above requirements. The fee shall be the amount of the fee charged by the applicant's state or country to a Kentucky resident applying for a reciprocal license or one hundred dollars (\$100), whichever is greater.}~~

➔Section 9. KRS 330.100 is amended to read as follows:

- (1) Every auctioneer licensed under this chapter shall maintain a definite place of business in the Commonwealth, except *that a nonresident holding a valid Kentucky auctioneer license*~~{as hereinafter provided, and shall erect and maintain a sign in a conspicuous place on the premises at or near the outside entrance to the principal office and all branch offices. The sign shall be written in clear and legible letters of not less than two (2) inches in height, and shall clearly show his name and indicate that he is an auctioneer. The sign shall be placed so that it can easily be observed and read by anyone entering the place of business; provided, however, that if the auctioneer is a nonresident,}~~ *is not required*~~{it is not necessary for him}~~ to maintain an active place of business in the Commonwealth if ~~{he maintains}~~ a place of business *is maintained* in the *nonresident's* state~~{where he was originally licensed}~~.
- (2) Every auction house operator licensed under this chapter shall maintain a definite place of business in the Commonwealth, and shall erect and maintain a sign in a conspicuous place on the premises at or near the outside entrance to all fixed locations. The sign shall be written in clear and legible letters of not less than two (2) inches in height, and shall contain the name *and license number* of the auction house operator,~~{the fact that he is licensed,}~~ and the name of the auction house, if different than the name of the operator. The sign shall be placed so that it can easily be observed and read by anyone entering the auction house.
- (3) *All claims or disputes of auctions conducted in the Commonwealth of Kentucky and auctions of real or personal property located in the Commonwealth of Kentucky shall be adjudicated by the courts of this state*~~{Every livestock auctioneer and tobacco auctioneer licensed under this chapter shall conform to the provisions of subsection (1) of this section. If the livestock auctioneer or tobacco auctioneer does not wish to maintain a separate and definite place of business, he may use one (1) of the fixed base locations where he is operating as such place of business. The board shall be kept advised as to the location pursuant to KRS 330.070}~~.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 330 IS CREATED TO READ AS FOLLOWS:

- (1) *Any advertising pertaining to an auction shall include the name of the managing principal auctioneer for the auction and indicate that he or she is an auctioneer, except that any advertising pertaining to an auction*

*conducted at an auction house operated by a licensed auction house operator shall include the name of the auction house operator and indicate that he or she is an auction house operator or "AHO." The advertising requirements in this subsection shall not apply to directional signs if a sign with the name of the managing principal auctioneer for the auction or the auction house operator is placed so that it can be easily observed and clearly read by anyone entering the auction site.*

- (2) *The existence and amount of any buyer's fee or buyer's premium shall be clearly disclosed in all terms and conditions included in any advertisements for a particular auction and in all terms and conditions presented or made available prior to the start of a particular auction.*
- (3) (a) *An auction shall not be advertised as "Court Ordered" or use similar wording implying court action unless:*
  1. *At least seventy-five percent (75%) of the items or lots in the auction are being offered pursuant to one (1) or more federal, state, or local court orders; and*
  2. *The items or lots were clearly not purchased or attained for the purpose of resale at auction.*
- (b) *The advertising shall clearly contain an explanation of the court order including identification of the court.*
- (c) *If less than one hundred percent (100%) of the items or lots being offered at the auction are pursuant to one (1) or more court orders, then the advertising shall clearly indicate that the auction is "With Additions" or use similar wording.*
- (d) *This subsection shall not prohibit clear, nonmisleading advertising of the inclusion of specific real or personal property being offered pursuant to a federal, state, or local court order in an auction if that real or personal property is offered pursuant to a federal, state, or local court order and was clearly not purchased or attained for the purpose of resale at auction.*
- (4) (a) *An auction shall not be advertised as a "Bankruptcy Auction" or "Items from Bankruptcy" or use similar wording or any combination thereof unless:*
  1. *The auction consists of at least seventy-five percent (75%) of items or lots to be offered for one (1) or more open and working bankruptcies under the jurisdiction of the United States Bankruptcy Court;*
  2. *The items or lots were clearly not purchased or attained for the purpose of resale at auction; and*
  3. *The advertising clearly includes the United States Bankruptcy Court case number or numbers.*
- (b) *If less than one hundred percent (100%) of the items or lots being offered at the auction are for one (1) or more bankruptcies, then the advertising shall clearly indicate that the auction is "With Additions" or use similar wording.*
- (c) *This subsection shall not prohibit clear, nonmisleading advertising of the inclusion of specific real or personal property being offered for a bankruptcy in an auction if that real or personal property is being offered for one (1) or more open and working bankruptcies under the jurisdiction of the United States Bankruptcy Court, was not purchased or attained for the purpose of resale at auction, and the advertising clearly includes the United States Bankruptcy Court case number or numbers.*
- (5) (a) *An auction shall not be advertised as a "Seized Property Auction," "Confiscated Property Auction," or "Forfeiture Property Auction" or utilize similar wording or any combination thereof implying governmental action unless:*
  1. *The auction contains at least seventy-five percent (75%) of the items or lots to be offered pursuant to one (1) or more federal, state, or local governmental actions in which the real or personal property is being offered directly for the federal, state, or local governmental entity;*
  2. *The items or lots were clearly not purchased or attained for the purpose of resale at auction; and*
  3. *The advertising clearly contains an explanation of the governmental action, including identification of the governmental entity.*

- (b) *If less than one hundred percent (100%) of the items or lots being offered at the auction are from one (1) or more governmental actions, then the advertising shall clearly indicate that the auction is "With Additions" or use similar wording.*
  - (c) *This subsection shall not prohibit clear, nonmisleading advertising of the inclusion of specific real or personal property being offered pursuant to a federal, state, or local governmental action in an auction if the real or personal property is offered directly for a federal, state, or local governmental entity and was clearly not purchased or attained for the purpose of resale at auction.*
- (6) (a) *An auction shall not be advertised as a "Liquidation Auction," "Surplus Auction," "Inventory Reduction Auction," or "Going Out of Business Auction" or use similar wording or any combination thereof unless:*
  - 1. *The auction contains at least seventy-five percent (75%) of the items or lots to be offered for one (1) or more liquidation, surplus, inventory reduction, or going out of business situations in which the real or personal property belongs to a company or other business entity and is being offered as "out of stock"; and*
  - 2. *The items or lots were clearly not purchased or attained for the purpose of resale at auction.*
- (b) *If less than one hundred percent (100%) of the items or lots being offered at the auction are from one (1) or more liquidation, surplus, inventory reduction, or going out of business situations, then the advertising shall clearly indicate that the auction is "With Additions" or use similar wording.*
- (c) *This subsection shall not prohibit clear, nonmisleading advertising of the inclusion of specific real or personal property being offered for a liquidation, surplus, inventory reduction, or going out of business situation, or similar wording or any combination thereof, in an auction if the real or personal property is being offered for a liquidation, surplus, inventory reduction, or going out of business situation in which the real or personal property belongs to a company or other business entity, is being offered as "out of stock," and was clearly not purchased or attained for the purpose of resale at auction.*
- (7) (a) *An auction shall not be advertised as an "Estate Auction," "Estate Settlement," or "To Settle the Estate of ... Auction" or use similar wording or any combination thereof unless:*
  - 1. *At least seventy-five percent (75%) of the items or lots in the auction are being offered for one (1) or more estates in which the real or personal property belongs to the estate of one (1) or more deceased persons and is being offered by the direction and authority of the authorized executor or administrator, or by court order, or by the direction and authority of one (1) or more direct heirs; and*
  - 2. *The items or lots were clearly not purchased or attained for the purpose of resale at auction.*
- (b) *If less than one hundred percent (100%) of the items or lots being offered at the auction are from one (1) or more estates, then the advertising shall clearly indicate that the auction is "With Additions" or use similar wording.*
- (c) *This subsection shall not prohibit clear, nonmisleading advertising of the inclusion of real or personal property offered for an estate in an auction if the real or personal property is being offered for an estate as set forth in this subsection.*
- (8) (a) *An auction shall not be advertised as a "Living Estate Auction" or "To Settle the Living Estate of ... Auction" or use similar wording or any combination thereof unless:*
  - 1. *At least seventy-five percent (75%) of the items or lots in the auction are being offered for one (1) or more living estates in which the real or personal property belongs to a household that is in transition due to a life-changing situation, including but not limited to one (1) or more members of the household moving into a retirement home, nursing home, or assisted living home or combining the household with another; and*
  - 2. *The items or lots were clearly not purchased or attained for the purpose of resale at auction.*
- (b) *If less than one hundred percent (100%) of the items or lots being offered at the auction are from one (1) or more living estates, then the advertising shall clearly indicate that the auction is "With Additions" or use similar wording.*

- (c) *This subsection shall not prohibit clear, nonmisleading advertising of the inclusion of real or personal property being offered for a living estate in an auction if the real or personal property is being offered for a living estate pursuant to this subsection.*

➔ Section 11. KRS 330.110 is amended to read as follows:

The board may suspend for a period up to **five (5)**~~four (4)~~ years or revoke the license of any licensee, or levy fines not to exceed **two thousand dollars (\$2,000)**~~five hundred dollars (\$500)~~ against any licensee, or place any licensee on probation for a period of up to **five (5)**~~three (3)~~ years, or require successful passage of any examination administered by the board, or require successful completion of any course of auction study or auction seminars designated by the board, or issue a formal reprimand, or order any combination of the above, for violation by any licensee of any of the provisions of this chapter, or for any of the following causes:

- (1) Obtaining a license through false or fraudulent representation;
- (2) Making any substantial misrepresentation;
- (3) Pursuing a continued and flagrant course of misrepresentation or intentionally making false promises or disseminating misleading information through agents or advertising or otherwise;
- (4) Accepting valuable consideration as an apprentice auctioneer for the performance of any of the acts specified in this chapter, from any person, except his or her principal auctioneer;
- (5) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession, commingling funds of others with the licensee's own **funds**, or failing to keep ~~the~~~~such~~ funds of others in an escrow or trustee account;
- (6) Paying valuable consideration to any person for services performed in violation of this chapter, or procuring, permitting, aiding, or abetting any unlicensed person acting in violation of any of the provisions of this chapter;
- (7) *Entering a plea of guilty, an Alford plea, or a plea of no contest or being convicted of any felony, and the time for appeal has passed or the judgment of conviction has been finally affirmed on appeal*~~Being convicted in a court of competent jurisdiction of this or any other state of a criminal offense involving moral turpitude or a felony~~;
- (8) Violation of any **provision of this chapter or any** administrative regulation promulgated by the board;
- (9) Failure to furnish voluntarily at the time of execution, copies of all written instruments prepared by **any licensee to each signatory of the written instrument**~~the auctioneer, apprentice auctioneer, or auction house operator~~;
- (10) Any conduct of a licensee which demonstrates bad faith, dishonesty, **incompetence**~~incompetency~~, or untruthfulness;
- (11) Any other conduct that constitutes improper, fraudulent, dishonest, or negligent dealings;
- (12) *Failure to enter into a binding written auction listing contract with the seller or with the seller's duly authorized agent prior to advertising, promoting, or offering any real or personal property by or at auction*~~Failing prior to the sale at public auction or prior to publicly advertising any goods for sale or offering any goods for sale to enter into a written contract with the owner or consignee of any property to be sold, containing the terms and conditions upon which the licensee receives the property for sale~~;
- (13) *Failure to provide a receipt to all persons consigning personal property with any licensee for auction*~~After January 1, 1993, failure of any licensee to insert in any advertising pertaining to a particular sale the name of the auctioneer~~;
- (14) *Failure to establish and maintain, for a minimum of five (5) years from final settlement, complete and correct written or electronic records and accounts of all auction transactions, including:*
  - (a) *Listing contracts, including the name and address of the seller;*
  - (b) *Written purchase contracts;*
  - (c) *Descriptive inventory and final bid amounts of all items or lots offered;*
  - (d) *Buyer registration records; and*
  - (e) *Settlement records, including all moneys received and disbursed and escrow account activity; or*

- (15) *Failure of any licensee to present any auction-related information, including but not limited to advertisements, listing contracts, purchase contracts, clerking records, buyer registration records, settlement records, escrow account information, license, or any other auction-related information, subsequent to a request by a board compliance officer or board counsel.*

➔Section 12. KRS 330.115 is amended to read as follows:

- (1) All complaints against licensees ~~shall~~**must** be submitted to the board ~~in triplicate,~~ on forms furnished by the board. The complaint ~~shall~~**must** state facts which, if true, would ~~present~~**make out** a prima facie case against the licensee.
- (2) ~~[A copy of the complaint, exhibits attached thereto, and any subsequent pleadings, must be served on the licensee defendant, by the complainant, at the licensee's last known address and must show certification that there has been service by writing to the last known address.~~
- (3) ~~]~~The **board shall send the answer form and a copy of the complaint to the licensee by certified mail**~~[defendant licensee must file with the board an answer to the complaint, in triplicate, and properly notarized, on forms secured from the board offices].~~ The **completed answer form shall**~~must~~ be returned to the board within twenty (20) **working days from the date of receipt.**~~[and] The board shall forward~~ a copy of the answer **to the complainant**~~[, exhibits attached thereto, as well as any subsequent pleadings, must be served on complainant and must show certification that there has been service by writing to the last known address. Any and all further pleadings in the matter filed with the board by either party must show that a copy has been furnished to the opposing party or parties].~~

➔Section 13. KRS 330.120 is amended to read as follows:

- (1) The board may upon its own motion, and shall upon the verified written complaint of any person, investigate the actions of any licensee~~[, or auction house operator,]~~ or any person who assumes to act as a licensee if the complaint, or complaint together with other evidence presented in connection with it, ~~presents~~**makes out** a prima facie case of a violation of this chapter. If a prima facie case is not established or the violation is deemed inconsequential, the board may immediately dismiss the complaint.
- (2) If, after an investigation that includes opportunity for the licensee to respond, the board determines that a violation took place but was not of a serious nature, it may issue a written admonishment to the licensee. A copy of the admonishment shall be placed in the ~~permanent~~ file of the licensee. The licensee shall have the right to file a response to the admonishment within thirty (30) days of its receipt and to have the response placed in the ~~permanent~~ licensure file. The licensee may alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing under the provisions of KRS Chapter 13B.

➔Section 14. KRS 330.130 is amended to read as follows:

- (1) Before denying an application for license or before imposing any disciplinary action authorized under KRS 330.110, the board shall set the matter ~~down~~ for an administrative hearing, if a hearing is requested by the applicant or licensee. The hearing shall be conducted in accordance with KRS Chapter 13B. If ~~[the applicant or licensee who is]~~ the subject of the hearing is an apprentice auctioneer, the board shall also provide notification of the hearing to the auctioneer employing him or whose employ he is about to enter, by ~~sending~~**mailing** notice by certified mail, return receipt requested, to the auctioneer's last known business address.
- (2) Any party aggrieved by a final order of the board refusing to grant a license or suspending or revoking a license may appeal the final order to the Circuit Court of the county in which the **applicant or licensee resides**~~[office of the board is located],~~ in accordance with KRS Chapter 13B.

➔Section 15. KRS 330.170 is amended to read as follows:

- (1) Any licensee ~~whose~~**who has had his** license **has been** revoked shall not be issued another license for a period of five (5) years from the date of revocation.
- (2) The revocation of an auctioneer's license shall automatically suspend every apprentice auctioneer's license granted to any person **employed or supervised**~~[by virtue of his employment]~~ by the auctioneer whose license has been revoked. The apprentice auctioneer may retain his license by transferring to the employment of another licensed auctioneer within thirty (30) days.

➔Section 16. KRS 330.180 is amended to read as follows:

The board shall adopt a seal by which it shall authenticate its proceedings. Copies of all records and papers in the office of the board, duly certified and authenticated by the seal of the board, shall be received in evidence in all courts equally and with like effect as the original. Public inspection of ~~all~~ records kept in the office of the board under the authority of this chapter shall be ~~as~~ permitted by applicable provisions *of the Open Records Act of the Commonwealth of Kentucky, KRS 61.870 to 61.884*~~[relating to open records, and under guidelines as shall be prescribed by the board pursuant to those provisions].~~

➔Section 17. KRS 330.190 is amended to read as follows:

- (1) No person, engaged in the business of or acting in the capacity of any licensee under this chapter shall bring or maintain any action in the courts of the Commonwealth for the collection of compensation for any services performed as ~~such~~ a licensee without first ~~alleging and~~ proving that he *or she* was duly licensed at the time the alleged cause of action arose.
- (2) No apprentice auctioneer shall have the right to institute a suit in his *or her* own name for the recovery of a commission, fee, or compensation for services as an apprentice auctioneer, but any such act shall be instituted and brought by the licensed auctioneer employing an apprentice auctioneer; provided, however, that this subsection shall not be construed so as to prevent a licensed apprentice auctioneer from suing his *or her* employing auctioneer for any compensation, fees, or commissions due ~~him~~ from ~~the~~ auctioneer.

➔Section 18. KRS 330.192 is amended to read as follows:

- (1) (a) There is hereby created and established in the State Treasury the auctioneer's education, research, and recovery fund.
- (b) ~~[In addition to the license fees provided for in KRS 330.070, upon renewal of every license issued pursuant to this chapter, the board shall charge every licensee an amount not to exceed thirty dollars (\$30) per year to be included in the auctioneer's education, research, and recovery fund. Every original applicant for apprentice or auctioneer's license, and every applicant for an auction house operator's license on and after July 15, 1982, shall likewise submit to the board an additional fee of thirty dollars (\$30) to be deposited in the auctioneer's education, research, and recovery fund and shall also be subjected thereafter to an annual renewal fee as of the regular renewal date.~~
- (~~e~~) In addition to the license fees *established*~~[provided for]~~ in KRS 330.070, *and Section 8 of this Act*, the board~~[, based upon its own discretion as to need,]~~ may assess each licensee ~~a~~<sup>upon</sup> renewal *recovery fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A*~~[an amount equal to or less than thirty dollars (\$30) per year, or nothing, but not more].~~ Each *initial*~~[original]~~ applicant shall pay *an initial recovery fee established by administrative regulations promulgated by the board in accordance with KRS Chapter 13A*~~[the original amount of thirty dollars (\$30), but upon renewal shall pay the same fee as other licensees].~~
- (2) The purposes of the auctioneer's education, research, and recovery fund shall be as follows:
  - (a) When a licensee has been duly found guilty of violating ~~any~~ one (1) or more of the provisions of *this chapter*~~[KRS 330.110]~~, or ~~any~~ one (1) or more of the administrative regulations duly promulgated by the board, and upon the conclusion of a final order entered by the board or by the courts, if appealed, the board is authorized to pay to the aggrieved *party*~~[person or persons]~~ an ~~aggregate~~ amount not to exceed fifty thousand dollars (\$50,000) against any one (1) licensee, ~~if~~<sup>provided that</sup> the licensee has refused to pay *the*~~[such]~~ claim within ~~a period of~~ twenty (20) days of entry of a final order and provided further that the amount or amounts of money in question are certain and liquidated.
  - (b) The board shall maintain a minimum ~~level~~ of five hundred thousand dollars (\$500,000) for recovery and guaranty purposes. These funds may be invested and reinvested in the same manner as funds of the State Employees' Retirement System and the interest from said investments shall be deposited to the credit of the research and recovery fund, or, in the discretion of the board, to the agency fund account as set out in KRS 330.050(6). Sufficient liquidity, however, ~~shall~~<sup>will</sup> be maintained so that ~~there will be~~ money *is* available to satisfy ~~any and~~ all claims which may be processed through the board by means of administrative hearing as outlined in this chapter.
  - (c) The board~~[, in its discretion,]~~ may use ~~any~~ funds in excess of ~~the~~ five hundred thousand *dollars*~~[dollar]~~ (\$500,000)~~[ level]~~, ~~regardless of~~ whether ~~it is~~ from the auctioneer's education, research, and recovery fund fees or accrued interest thereon, for any of the following purposes:

1. To *advance*~~carry out the advancement of~~ education and research in the auction field for the benefit of those licensed under the provisions of this chapter and *to improve and make more*~~the improvement and making even more~~ efficient the auction industry~~as such~~;
  2. To underwrite educational seminars, caravans, and other forms of educational projects for the *general benefit*~~use and benefit generally~~ of ~~the~~licensees;
  3. To establish an auction chair or courses at Kentucky state institutions of higher learning for the purpose of making *college or university level* ~~such~~ courses available to licensees and the general public~~who may seek same on a college or university level~~;
  4. To contract for a particular research project in the auction field for the Commonwealth of Kentucky;
  5. To sponsor, contract for, and to underwrite~~any and~~ all other educational and research projects *that contribute to*~~of a similar nature having to do with~~ the advancement of the auction field in Kentucky;
  6. To cooperate with associations of auctioneers and any other groups for the enlightenment and advancement of *Kentucky licensees*~~the auctioneer licensees of Kentucky~~~~and~~;
  7. To increase the level of the auctioneer's education, research, and recovery fund above five hundred thousand dollars (\$500,000); *and*
  8. To augment the regular trust and agency account of the board.
- (3) (a) ~~If~~~~in the event that~~ a licensee is found guilty of one (1) or more provisions of *this chapter*~~KRS 330.110~~ or of violating one (1) or more of the administrative regulations of the board, and if the amount of the money lost by the aggrieved party or parties is in dispute or cannot be determined accurately, then the amount of damages shall be determined by ~~the~~ Circuit Court in the county where the alleged violation took place, provided that the board has previously determined that a violation of the license laws or of the administrative regulations has occurred and a final order has been entered.
- (b) If ~~such~~ an order has been entered and the license rights of the licensee have been finally adjudicated, then the local Circuit Court shall *determine*~~make a finding as to~~ the monetary damages *due from*~~growing out of~~ the aforesaid violation or violations.
- (c) When a final order has been entered by the Circuit Court, Court of Appeals, or Supreme Court, and upon certification to the board, the aggrieved party or parties shall be paid *an amount*~~such amount or amounts in the aggregate~~ not to exceed fifty thousand dollars (\$50,000) by the board, and the license held by the licensee against whom the claim was made by the aggrieved party shall be suspended at least until ~~such time as~~ the licensee has reimbursed the auctioneer's education, research, and recovery fund for all amounts paid to the aggrieved party due to the violation of the licensee.
- (d) When, upon the final order of the court, the board has paid from the auctioneer's education, research, and recovery fund any sum to the aggrieved party, the board shall be subrogated to all of the rights of the aggrieved party to the extent of the payment and the aggrieved party shall, to the extent of the payment, assign his right, title, and interest in the judgment to the *board*~~commission~~.
- (e) ~~Any funds in excess of the five hundred thousand dollar (\$500,000) level and which are not being currently used, may be invested and reinvested as set forth in subsection (2)(b) of this section, or, in the discretion of the board, may be utilized for any of the purposes enumerated in subsection (2)(c) of this section.~~
- ~~(f)~~ All ~~the~~ claims for monetary damages or relief from the auctioneer's education, research, and recovery fund *shall*~~must~~ be made in writing *and*~~on a proof of loss form~~ submitted to the board within *twelve (12)*~~six (6)~~ months of the act of the auctioneer giving rise to the loss. Failure to file a *claim*~~such claims~~ within the *twelve (12)*~~six (6)~~ month period shall bar the claim. Additional evidence *shall*~~will~~ be submitted by the claimant if required by the board.
- ~~(f)~~~~(g)~~ Notwithstanding any other provisions of this chapter, no unreimbursed amount greater than fifty thousand dollars (\$50,000) shall be paid by the board on account of any one (1) licensee, no matter over how long a time, or for how many claims, and no matter what the number of claimants be or the size of

such claims, individually or in the aggregate. Should the licensee reimburse the fund for all amounts paid, then future claims timely filed with the board concerning different matters may be received pursuant to this section.

~~(g)(4)~~ No claims shall be approved under this section for amounts which, in the aggregate, exceed the maximum payable on account of any one (1) licensee in effect at the time of the act or acts of the licensee giving rise to the claims, except to the extent of said maximum. Statutory increases in the maximum set out in this section do not apply retroactively.

- (4) All categories of licensees under this chapter are covered under the provisions of this section for the benefit and protection of the public.
- (5) This section is not intended to substitute for, circumvent, or duplicate other remedies existing at law or otherwise for claimants or potential claimants, but constitutes a last resort for aggrieved persons who would not, but for the provisions of this section, be able to recover their losses by any other means available. The board shall have full discretion to require that claimants exhaust all other remedies prior to proceeding under this section, including, but not limited to, the remedy of obtaining a judgment by all diligent and appropriate means.

➔Section 19. KRS 330.210 is amended to read as follows:

- (1) Notwithstanding any contrary provisions of law and in furtherance of the policies set forth in KRS 355.2-328, at any auction sale of horses, the auctioneer:

~~(a)(1)~~ May receive bids from the seller, consignor, or his agent, disclosed or undisclosed, if notice has been given in the terms and conditions governing the sale, or otherwise, that liberty for such bidding has been reserved by seller;

~~(b)(2)~~ Shall conduct the sale with respect to each lot or parcel on a with-reserve basis unless the seller has authorized the auctioneer, in writing, to conduct the sale on a without-reserve basis, in which event the auctioneer shall announce, in explicit terms, that the goods are being sold without reserve; and

~~(c)(3)~~ Shall not be required to announce at any with-reserve sale when the reserve is attained.

- (2) ***Notwithstanding any other provision of this chapter, the following shall not apply to auctions or auctioneers participating in an auction regarding the sale, lease, or exchange of an equine as defined in KRS 230.357(1):***

*(a) The advertising requirements set forth in subsections (1), (2), and (7) of Section 10 of this Act;*

*(b) The causes justifying disciplinary action set forth in subsections (12), (13), (14), and (15) of Section 11 of this Act; or*

*(c) The provisions regulating absolute auctions and reserve auctions set forth in subsections (5) and (7) of Section 20 of this Act.*

➔Section 20. KRS 330.220 is amended to read as follows:

- (1) ***If real or personal property is offered in lots or parcels in a sale by auction, each lot or parcel shall be the subject of a separate sale. This subsection shall not preclude real or personal property from being offered for bidding individually or in some form or combination.***

- (2) ***Unless otherwise provided in the conditions of sale for auctions regarding horses or any interests therein, a sale by auction is complete when the auctioneer so announces by the fall of the hammer, announcing the item sold, and the successful bidder's identification or in other customary manner. If it becomes immediately apparent at the close of the bidding that the auctioneer and a bid assistant or ringman have acknowledged the same bid from different bidders, the auctioneer may continue the bidding between the disputed bidders. When a bid is made while the auctioneer is in the process of completing the sale by auction, the auctioneer may continue the bidding or declare the real or personal property sold under the bid on which the hammer was falling.***

- (3) No auction shall be advertised as "absolute" nor shall any advertising contain the words "absolute auction" or the word "absolute" or words with similar meaning nor shall any licensee offer or sell any ***real or personal property***~~[goods]~~ at absolute auction unless:

- (a) There are no liens or encumbrances on the **real or personal property**~~[goods]~~, except **property**~~[current]~~ tax obligations, easements, or restrictions of record, in favor of any person, firm, or corporation other than the seller, or unless each and every holder of each and every lien and encumbrance, by execution of the auction listing contract, or otherwise furnishing to the auctioneer written evidence of a binding commitment therefor, shall have agreed to the unqualified acceptance of the highest bid for the property, without regard to the amount of the highest bid or the identity of the high bidder; or, alternatively, that a financially responsible person, firm, or corporation, by execution of the auction listing contract or by otherwise furnishing to the auctioneer written evidence of a binding commitment therefor, shall have absolutely guaranteed the forthwith and complete discharge and satisfaction of any and all liens and encumbrances immediately after the sale or at the closing, without regard to the amount of the highest bid received, or the identity of the high bidder; and
- (b) There is the bona fide intention at the time of the advertising and at the time of the auction~~[sale]~~ to transfer ownership of the **real or personal property**~~[goods]~~, regardless of the amount of the highest and last bid, to the high bidder, that intent existing without reliance on any agreement that any particular bid or bid level must be made or be reached, below which level the **real or personal property**~~[goods]~~ would not be transferred to the high bidder; and
- (c) The auction listing contract contains a binding requirement that the **auction**~~[sale]~~ be conducted without reserve, **and includes**~~[by specific inclusion of]~~ an acknowledgment ~~[by the seller]~~ that the seller, or anyone acting upon behalf of the seller, shall not bid at the absolute auction, or otherwise participate in the bidding process.

~~(4)(2)~~ Compliance with subsection ~~(3)(1)~~ of this section shall not prohibit:

- (a) A secured party or other lienholder who is not the seller from bidding at an absolute auction~~[sale]~~, providing that such bidding does not constitute, nor is it tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price on the **real or personal property**~~[goods]~~ by the seller or by the auctioneer, or by anyone aiding or assisting, or acting upon behalf of, the seller or the auctioneer; or
- (b) Any individual party to the dissolution of any marriage, partnership, or corporation from bidding as an individual entity apart from the selling entity, on **real or personal property**~~[goods]~~ being sold at auction pursuant to that dissolution; or
- (c) **Any individual party or heir of a deceased person's bona fide estate from bidding as an individual entity, apart from the selling entity, on real or personal property being offered at auction pursuant to that estate settlement; or**
- (d) The inclusion of nonmisleading advertising of certain **real or personal property**~~[goods]~~ to be sold at "absolute auction" and the nonmisleading advertising of certain **real or personal property**~~[goods]~~ to be **offered**~~[sold]~~ at auction with reserve, within the same advertisement, or for sale at the same date and place, providing that advertisement shall make clearly apparent through equal or appropriate emphasis, which **real or personal property is**~~[goods are]~~ being **offered**~~[sold]~~ by each method.

~~(5)(3)~~ Any auction sale is, without requirement of announcement at any time, presumed to be with reserve unless the **real or personal property is**~~[goods are]~~ in explicit terms **offered**~~[put up]~~ at absolute auction. An auction without reserve means an absolute auction. An auction with reserve means the **real or personal property**~~[goods]~~ may be **offered**~~[put up]~~ subject to the seller's confirmation or subject to a certain reserve price. ***In an auction with reserve, the auctioneer may withdraw the real or personal property at any time until he or she announces completion of the sale. In an absolute auction, after the auctioneer calls for bids on an article, lot, or parcel, that article, lot, or parcel shall not be withdrawn unless no bid is made within a reasonable time. At both reserve auctions and without reserve auctions, the auctioneer may establish reasonable bid increments once an opening bid has been offered.***

~~(6)(4)~~ (a) The provisions of this chapter shall not prohibit any licensee from ~~bona fide~~ bidding on his **or her** own behalf at any auction sale, whether absolute or with reserve, ~~if provided that~~ his **or her** option to do so ~~has~~~~shall have~~ been fully disclosed, including disclosure to the seller.

- (b) Except as provided in subsection (4)~~(2)~~ of this section, the seller may not bid at an absolute auction, nor may anyone bid upon his *or her* behalf. No licensee shall knowingly receive~~such~~ a bid by or on behalf of the seller at an absolute auction.
- (c) Bids may be made by the seller, or upon the seller's behalf, at any auction with reserve, provided that full disclosure has *clearly* been made that liberty for~~such~~ bidding is retained. No licensee shall knowingly receive~~such~~ a bid in the absence of full disclosure. ***If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures a bid and notice has not been clearly given that liberty for bidding is reserved, the buyer may avoid the sale or take the real or personal property at the price of the last good faith bid prior to the completion of the sale.***
- (d) There shall be no requirement ~~at a with reserve sale~~ that the reserve be announced when it is attained.
- (e) ***Nothing in this subsection shall be construed to alter or diminish the provisions of Section 19 of this Act.***
- (7) (a) ***At any absolute auction, any advertisement or representation of a minimum or suggested starting bid is prohibited.***
- (b) ***At any reserve auction, any advertisement or representation of a minimum or suggested starting bid is prohibited unless:***
  - 1. ***The minimum or suggested starting bid advertised or represented is sufficient to satisfy the auction listing contract stated reserve or confirmation amount; and***
  - 2. ***The auction listing contract contains a binding acknowledgment by the seller that permission has been granted for disclosure.***

➔Section 21. KRS 330.990 is amended to read as follows:

- (1) ***Any person engaging in auction activities regulated by this chapter without a license shall be guilty of:***
  - (a) ***For the first offense, a violation with a fine up to two hundred fifty dollars (\$250);***
  - (b) ***For the second offense, a Class B misdemeanor with a fine up to two hundred fifty dollars (\$250) and up to ninety (90) days imprisonment; and***
  - (c) ***For the third and subsequent offenses, a Class A misdemeanor with a fine up to five hundred dollars (\$500) and up to twelve (12) months imprisonment.***
- (2) ***The board or its authorized representative may apply for injunctive relief to the Circuit Court of the county in which the alleged violation occurred to enjoin any person or entity from committing an act in violation of this chapter. The injunction proceedings shall be in addition to, and not in lieu of, all penalties and other remedies in this chapter. In an action for injunction, the board may demand and recover a civil penalty of fifty dollars (\$50) per day for each violation, reasonable attorney's fees, and court costs.***~~*Any person who willfully violates any provision of KRS Chapter 330 or any rule or regulation promulgated in accordance with KRS Chapter 330 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment for a term not to exceed ninety (90) days, or both.*~~

➔Section 22. The following KRS sections are repealed:

330.033 Limited licenses for livestock and tobacco auctioneers.

330.035 License required to act as auction house operator.

330.090 Nonresident licensee -- Fees -- Consent to be sued -- Waiver of apprenticeship requirement.

**Signed by the Governor March 24, 2009.**

## CHAPTER 71

### (HB 204)

AN ACT relating to the county employees retirement system.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 78.510 is amended to read as follows:

As used in KRS 78.510 to 78.852, unless the context otherwise requires:

- (1) "System" means the County Employees Retirement System;
- (2) "Board" means the board of trustees of the system as provided in KRS 78.780;
- (3) "County" means any county, or nonprofit organization created and governed by a county, counties, or elected county officers, sheriff and his employees, county clerk and his employees, circuit clerk and his deputies, former circuit clerks or former circuit clerk deputies, or political subdivision or instrumentality, including school boards, charter county government, or urban-county government participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency, organization, or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (4) "School board" means any board of education participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (5) "Examiner" means the medical examiners as provided in KRS 61.665;
- (6) "Employee" means every regular full-time appointed or elective officer or employee of a participating county and the coroner of a participating county, whether or not he qualifies as a regular full-time officer. The term shall not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 78.510 to 78.852;
- (7) "Employer" means a county, as defined in subsection (3) of this section, the elected officials of a county, or any authority of the county having the power to appoint or elect an employee to office or employment in the county;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1958, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided;
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1958, for which creditable compensation was paid. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work. Twelve (12) months of current service in the system shall be required to validate prior service;
- (12) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4), together with interest credited on the amounts, and any other amounts the member shall have contributed thereto, including interest credited thereon;
- (13) "Creditable compensation" means all salary, wages, and fees, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation", including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's service with the system in which it is recorded if it is equal to or greater than one thousand dollars (\$1,000). If compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, sick leave except as provided in KRS 78.616(5), and other items determined by the board shall be excluded. Creditable compensation shall also include amounts that are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the

Internal Revenue Code. Creditable compensation shall also include elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4). For employees who begin participating on or after September 1, 2008, creditable compensation shall not include payments for compensatory time;

- (14) "Final compensation" means:
- (a) For a member who begins participating before September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;
  - (b) For a member who is not employed in a hazardous position, as provided in KRS 61.592, whose effective retirement date is between August 1, 2001, and January 1, 2009, and whose total service credit is at least twenty-seven (27) years and whose age and years of service total at least seventy-five (75), final compensation means the creditable compensation of the member during the three (3) fiscal years the member was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used. Notwithstanding the provision of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance;
  - (c) For a member who begins participating before September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;
  - (d) For a member who begins participating on or after September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) complete fiscal years immediately preceding retirement divided by five (5). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit; or
  - (e) For a member who begins participating on or after September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) complete fiscal years he was paid at the highest average monthly rate divided by three (3). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit;
- (15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, and shall include employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7.5) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;
- (16) "Retirement allowance" means the retirement payments to which a member is entitled;
- (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables as are from time to time adopted by the board, except in case of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member. No disability retirement option shall be less than the same option computed under early retirement;
- (18) "Normal retirement date" means the sixty-fifth birthday of a member unless otherwise provided in KRS 78.510 to 78.852;
- (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year;

- (20) "Agency reporting official" means the person designated by the participating agency who shall be responsible for forwarding all employer and employee contributions and a record of the contributions to the system and for performing other administrative duties pursuant to the provisions of KRS 78.510 to 78.852;
- (21) "Regular full-time positions," as used in subsection (6) of this section, shall mean all positions that average one hundred (100) or more hours per month, determined by using the number of hours actually worked in a calendar or fiscal year, or eighty (80) or more hours per month in the case of noncertified employees of school boards, determined by using the number of hours actually worked in a calendar or school year, unless otherwise specified, except:
- (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and that may recur regularly from year to year, in which case the period of time shall not exceed ***nine (9) months, except for employees of school boards, in which case the period of time shall not exceed*** six (6) months ~~in any event~~;
  - (b) Emergency positions that are positions that do not exceed thirty (30) working days and are nonrenewable;
  - (c) Temporary, also referred to as probationary, positions that are positions of employment with a participating agency for a period of time not to exceed twelve (12) months and not renewable; or
  - (d) Part-time positions that are positions that may be permanent in duration, but that require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty, except in case of noncertified employees of school boards, the school term average shall be eighty (80) hours of work per month, determined by using the number of months actually worked in a calendar or school year, in the performance of duty;
- (22) "Alternate participation plan" means a method of participation in the system as provided for by KRS 78.530(3);
- (23) "Retired member" means any former member receiving a retirement allowance or any former member who has on file at the retirement office the necessary documents for retirement benefits and is no longer contributing to the system;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, beneficiary shall not mean an estate, trust, or trustee;
- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;
- (27) "Person" means a natural person;
- (28) "School term or year" means the twelve (12) months from July 1 through the following June 30;
- (29) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (30) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula in KRS 61.5525, except the determination of the actuarial cost for classified employees of a school board shall be based on their final compensation, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;
- (31) "Participating" means an employee is currently earning service credit in the system as provided in KRS 78.615; and

(32) "Month" means a calendar month.

**Signed by the Governor March 24, 2009.**

## CHAPTER 72

### (HB 249)

AN ACT relating to approval of capital projects.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 56.491 is amended to read as follows:

- (1) No state agency shall have power or authority to make plans and specifications, provide public notice of invitations for bids, let contracts, or incur any financing commitments, either in the way of a charge against public funds or in the way of negotiations for issuance of revenue bonds, for any capital construction projects involving the improvement of lands or the construction, alteration, reconstruction, or major repair of any building or other structure, or sewage disposal or water supply system, requiring the expenditure of more than ***two hundred fifty***~~two hundred~~ thousand dollars ***(\$250,000)***~~(\$200,000)~~ without first securing the approval of the Finance and Administration Cabinet.
- (2) The state agency seeking the approval shall submit to the Finance and Administration Cabinet a general description of the proposed project, with the detailed information the cabinet may require. Review of construction plans for conformance with the Uniform State Building Code shall be conducted by the Office of Housing, Buildings and Construction. The Finance and Administration Cabinet shall not approve any project requiring its approval in any instance if it finds that: the project is not needed; the proposed method of financing is not sound; the project will exceed the amount of the funds available therefor; the work contemplated will be insufficient to accomplish the purpose of the project; or after providing for the ordinary recurring expenses of government and debt service and for payments under existing allotments for extraordinary expenses and capital outlay, cash will not be available in the State Treasury to promptly pay for the work during the biennium, or except as provided in subsection (5) of this section, that the work is to be done by employees of the agency.
- (3) The finding of the Finance and Administration Cabinet shall be final, except in cases where the issuance and sale of bonds is proposed, in which cases the cabinet shall submit its findings to the commission for final approval, modification, or disapproval.
- (4) Any capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will exceed ***two hundred fifty***~~two hundred~~ thousand dollars ***(\$250,000)***~~(\$200,000)~~, shall be contracted for on a competitive bid basis, and the execution of the contracts shall be approved and authorized by the cabinet. When a capital construction project has been approved as provided in this section, in whole or in part, the cabinet shall prepare the plans and specifications, provide public notice of invitations for bids, award the contracts, supervise the construction, and handle the financial negotiations on behalf of the requesting state agency; or with prior written approval, the cabinet may authorize a state agency to do so with delegated authority of the cabinet.
- (5) A capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will not exceed ***two hundred fifty***~~two hundred~~ thousand dollars ***(\$250,000)***~~(\$200,000)~~, may be performed by the employees of the requesting agency or by individuals hired specifically for the project who shall be exempt from the requirements of KRS Chapter 18A, if the project is approved and authorized by the cabinet. Necessary materials and supplies shall be procured in accordance with the standard purchasing procedures and policies of the cabinet as defined in KRS Chapter 45A.
- (6) This section shall not apply to capital outlays to the Department of Highways for roads and bridges.
- (7) This section shall not apply to capital outlays by the Justice and Public Safety Cabinet for repair, maintenance, improvement, or expansion of present correctional facilities on which projects inmates are used. Any capital construction project to be performed by the Justice and Public Safety Cabinet shall be approved and authorized by the Finance and Administration Cabinet.

- (8) This section shall not apply to surveys capable of being performed by employees of the Department of Fish and Wildlife Resources. Boundary surveys or surveys involving property lines shall be performed by or under the supervision of an employee possessing a professional land surveyor license.

➔Section 2. KRS 164A.585 is amended to read as follows:

- (1) Subject to authorization by the General Assembly and KRS 164A.580, the governing boards may make plans and specifications, advertise for bids, let contracts or incur any financing commitments, either in the way of a charge against institution funds or in the way of negotiations for issuance of revenue bonds, for any capital construction projects involving the improvement of lands or the construction, alteration, reconstruction, or major repair of any building or other structure, or sewage disposal, water supply system or other utility system.
- (2) Review of construction plans for conformance with the uniform state building code shall be conducted by the Office of Housing, Buildings and Construction. The board shall not approve any such project requiring its approval in any instance where it finds that the project is not needed, or that the proposed method of financing is not sound, or in cases where the project will exceed the amount of the funds available therefor, or the work contemplated will be insufficient to accomplish the purpose of the project, or that after providing for the ordinary recurring expenses of administration and debt service and for payments under existing allotments for extraordinary expenses and capital outlay, cash will not be available in the Treasury to promptly pay for the work or that the work is to be done by employees of the institution.
- (3) Any capital construction project, except as provided in subsection (4) of this section, shall be contracted for on a competitive bid basis, and the execution of such contracts shall be approved and authorized by the board. When a capital construction project has been approved as provided in this section, in whole or in part, the board shall prepare the plans and specifications, advertise for bids, award the contracts, supervise the construction and handle the financial negotiations.
- (a) The governing board shall ensure that every invitation for bids or request for proposals shall provide that an item equal to that named or described in the specifications may be furnished.
- (b) The specifications may identify a sole brand in cases where, in the written opinion of the chief procurement officer, documented unique and valid conditions require compatibility, continuity, or conformity with established standards.
- (c) An item shall be considered equal to the item named or described if, in the opinion of the governing board and the design professional responsible for the specifications:
1. It is at least equal in quality, durability, strength, design, and other criteria deemed appropriate;
  2. It will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased; and
  3. It conforms substantially to the detailed requirements for the item in the specifications.
- (4) A capital construction project, the total cost of completion of which will not exceed *two hundred fifty*~~two hundred~~ thousand dollars *(\$250,000)*~~(\$200,000)~~, may be performed by the employees of the institution or by individuals hired specifically for the project. Necessary materials and supplies shall be procured in accordance with the standard purchasing procedures and policies of the board as defined in KRS 164A.575.

**Signed by the Governor March 24, 2009.**

## CHAPTER 73

### (HB 347)

AN ACT relating to the streamlined sales and use tax agreement.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 139.010 is amended to read as follows:

As used in this chapter, unless the context otherwise provides:

- (1) "Business" includes any activity engaged in by any person or caused to be engaged in by that person with the object of gain, benefit, or advantage, either direct or indirect;
- (2) "Commonwealth" means the Commonwealth of Kentucky;
- (3) "Department" means the Department of Revenue;
- (4)
  - (a) *"Digital audio-visual works" means a series of related images which, when shown in succession, impart an impression of motion, with accompanying sounds, if any.*
  - (b) *"Digital audio-visual works" includes movies, motion pictures, musical videos, news and entertainment programs, and live events.*
  - (c) *"Digital audio-visual works" shall not include video greeting cards, video games, and electronic games;*
- (5)
  - (a) *"Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds.*
  - (b) *"Digital audio works" includes ringtones, recorded or live songs, music, readings of books or other written materials, speeches, or other sound recordings.*
  - (c) *"Digital audio works" shall not include audio greeting cards sent by electronic mail;*
- (6)
  - (a) *"Digital books" means works that are generally recognized in the ordinary and usual sense as books, including any literary work expressed in words, numbers, or other verbal or numerical symbols or indicia if the literary work is generally recognized in the ordinary or usual sense as a book.*
  - (b) *"Digital books" shall not include digital audio-visual works, digital audio works, periodicals, magazines, newspapers, or other news or information products, chat rooms, or Web logs;*
- (7)
  - (a) *"Digital code" means a code which provides a purchaser with a right to obtain one (1) or more types of digital property. A "digital code" may be obtained by any means, including electronic mail messaging or by tangible means regardless of the code's designation as a song code, video code, or book code.*
  - (b) *"Digital code" shall not include a code that represents:*
    1. *A stored monetary value that is deducted from a total as it is used by the purchaser; or*
    2. *A redeemable card, gift card, or gift certificate that entitles the holder to select specific types of digital property;*
- (8)
  - (a) *"Digital property" means any of the following which is transferred electronically:*
    1. *Digital audio works;*
    2. *Digital books;*
    3. *Finished artwork;*
    4. *Digital photographs;*
    5. *Periodicals;*
    6. *Newspapers;*
    7. *Magazines;*
    8. *Video greeting cards;*
    9. *Audio greeting cards;*
    10. *Video games;*
    11. *Electronic games; or*
    12. *Any digital code related to this property.*
  - (b) *"Digital property" shall not include digital audio-visual works or satellite radio programming;*

- (9) (a) *"Finished artwork" means final art that is used for actual reproduction by photomechanical or other processes or for display purposes.*
- (b) *"Finished artwork includes:*
1. *Assemblies;*
  2. *Charts;*
  3. *Designs;*
  4. *Drawings;*
  5. *Graphs;*
  6. *Illustrative materials;*
  7. *Lettering;*
  8. *Mechanicals;*
  9. *Paintings; and*
  10. *Paste-ups;*
- ~~(10)~~(4) (a) "Gross receipts" and "sales price" mean the total amount or consideration, including cash, credit, property, and services, for which tangible personal property, *digital property*, or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:
1. The retailer's cost of the *tangible personal property or digital property* sold;
  2. The cost of the materials used, labor or service cost, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, or any other expense of the retailer;
  3. Charges by the retailer for any services necessary to complete the sale;
  4. Delivery charges, which are defined as charges by the retailer for the preparation and delivery to a location designated by the purchaser including transportation, shipping, postage, handling, crating, and packing; and
  5. Any amount for which credit is given to the purchaser by the retailer, other than credit for *tangible personal property or digital property* traded when the *tangible personal property or digital property* traded is of like kind and character to the property purchased and the property traded is held by the retailer for resale.
- (b) "Gross receipts" and "sales price" shall include consideration received by the retailer from a third party if:
1. The retailer actually receives consideration from a third party and the consideration is directly related to a price reduction or discount on the sale to the purchaser;
  2. The retailer has an obligation to pass the price reduction or discount through to the purchaser;
  3. The amount of consideration attributable to the sale is fixed and determinable by the retailer at the time of the sale of the item to the purchaser; and
  4. One (1) of the following criteria is met:
    - a. The purchaser presents a coupon, certificate, or other documentation to the retailer to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;
    - b. The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser; or

- c. The purchaser identifies himself or herself to the retailer as a member of a group or organization entitled to a price reduction or discount. A "preferred customer" card that is available to any patron does not constitute membership in such a group.
- (c) "Gross receipts" and "sales price" shall not include:
1. Discounts, including cash, term, or coupons that are not reimbursed by a third party and that are allowed by a retailer and taken by a purchaser on a sale;
  2. Interest, financing, and carrying charges from credit extended on the sale of tangible personal property, *digital property*, or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
  3. Any taxes legally imposed directly on the purchaser that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; or
  4. The amount charged for labor or services rendered in installing or applying the *tangible personal property*, *digital property*, or service sold, provided the amount charged is separately stated on the invoice, bill of sale, or similar document given to the purchaser.
- (d) As used in this subsection, "third party" means a person other than the purchaser;
- ~~(11)(5)~~ "In this state" or "in the state" means within the exterior limits of the Commonwealth and includes all territory within these limits owned by or ceded to the United States of America;
- ~~(12)(6)~~ (a) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental shall include future options to:
1. Purchase the property; or
  2. Extend the terms of the agreement and agreements covering trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. sec. 7701(h)(1).
- (b) "Lease or rental" shall not include:
1. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
  2. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of the required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments; or
  3. Providing tangible personal property and an operator for the tangible personal property for a fixed or indeterminate period of time. To qualify for this exclusion, the operator must be necessary for the equipment to perform as designed, and the operator must do more than maintain, inspect, or setup the tangible personal property.
- (c) This definition shall apply regardless of the classification of a transaction under generally accepted accounting principles, the Internal Revenue Code, or other provisions of federal, state, or local law;
- ~~(13)(7)~~ (a) "Machinery for new and expanded industry" means machinery:
1. Used directly in a manufacturing or processing production process;
  2. Which is incorporated for the first time into a plant facility established in this state; and
  3. Which does not replace machinery in the plant facility unless that machinery purchased to replace existing machinery:
    - a. Increases the consumption of recycled materials at the plant facility by not less than ten percent (10%);
    - b. Performs different functions;
    - c. Is used to manufacture a different product; or

- d. Has a greater productive capacity, as measured in units of production, than the machinery being replaced.
- (b) The term "machinery for new and expanded industry" does not include repair, replacement, or spare parts of any kind regardless of whether the purchase of repair, replacement, or spare parts is required by the manufacturer or vendor as a condition of sale or as a condition of warranty.
- (c) The term "processing production" shall include the processing and packaging of raw materials, in-process materials, and finished products; the processing and packaging of farm and dairy products for sale; and the extraction of minerals, ores, coal, clay, stone, and natural gas;
- ~~(14)(8)~~ "Manufacturing" means any process through which material having little or no commercial value for its intended use before processing has appreciable commercial value for its intended use after processing by the machinery. The manufacturing or processing production process commences with the movement of raw materials from storage into a continuous, unbroken, integrated process and ends when the product being manufactured is packaged and ready for sale;
- ~~(15)(9)~~ (a) "Occasional sale" includes:
1. A sale of *tangible personal* property *or digital property* not held or used by a seller in the course of an activity for which he or she is required to hold a seller's permit, provided such sale is not one (1) of a series of sales sufficient in number, scope, and character to constitute an activity requiring the holding of a seller's permit. In the case of the sale of the entire, or a substantial portion of the nonretail assets of the seller, the number of previous sales of similar assets shall be disregarded in determining whether or not the current sale or sales shall qualify as an occasional sale; or
  2. Any transfer of all or substantially all the *tangible personal* property *or digital property* held or used by a person in the course of such an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer.
- (b) For the purposes of this subsection, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the *tangible personal* property *or digital property* of such corporation or other entity;
- ~~(16)(10)~~ "Person" includes any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit;
- ~~(17)~~ "*Permanent,*" as the term applies to digital property, means perpetual or for an indefinite or unspecified length of time;
- ~~(18)(11)~~ "Plant facility" means a single location that is exclusively dedicated to manufacturing or processing production activities. For purposes of this section, a location shall be deemed to be exclusively dedicated to manufacturing activities even if retail sales are made there, provided that the retail sales are incidental to the manufacturing activities occurring at the location. The term "plant facility" shall not include any restaurant, grocery store, shopping center, or other retail establishment;
- ~~(19)(12)~~ "Prewritten computer software" means:
- (a) Computer software, including prewritten upgrades, that are not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two (2) or more prewritten computer software programs or portions thereof does not cause the combination to be other than prewritten computer software;
  - (b) Software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the original purchaser; or
  - (c) Any portion of prewritten computer software that is modified or enhanced in any manner, where the modification or enhancement is designed and developed to the specifications of a specific purchaser. When a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of the modifications or enhancements the person actually made. In the case of modified or enhanced prewritten software, if there is a reasonable,

separately stated charge on an invoice or other statement of the price to the purchaser for the modification or enhancement, then the modification or enhancement shall not constitute prewritten computer software;

- (20)~~(13)~~ "Purchase" means any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property *or digital property transferred electronically* for a consideration and includes:
- (a) When performed outside this state or when the customer gives a resale certificate, the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting;
  - (b) A transaction whereby the possession of *tangible personal property or digital property* is transferred but the seller retains the title as security for the payment of the price; and
  - (c) A transfer for a consideration of the title or possession of tangible personal property *or digital property* which has been produced, fabricated, or printed to the special order of the customer, or of any publication;
- (21)~~(14)~~ "Recycled materials" means materials which have been recovered or diverted from the solid waste stream and reused or returned to use in the form of raw materials or products;
- (22)~~(15)~~ "Recycling purposes" means those activities undertaken in which materials that would otherwise become solid waste are collected, separated, or processed in order to be reused or returned to use in the form of raw materials or products;
- (23)~~(16)~~ (a) "Repair, replacement, or spare parts" means any tangible personal property used to maintain, restore, mend, or repair machinery or equipment.
- (b) "Repair, replacement, or spare parts" does not include machine oils, grease, or industrial tools;
- (24)~~(17)~~ (a) "Retailer" means:
1. Every person engaged in the business of making retail sales *of tangible personal property, digital property*, or furnishing any services included in KRS 139.200;
  2. Every person engaged in the business of making sales at auction of tangible personal property *or digital property* owned by the person or others for storage, use or other consumption;
  3. Every person making more than two (2) retail sales *of tangible personal property or digital property* during any twelve (12) month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy;
  4. Any person conducting a race meeting under the provision of KRS Chapter 230, with respect to horses which are claimed during the meeting.
- (b) When the department determines that it is necessary for the efficient administration of this chapter to regard any salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property *or digital property* sold by them, irrespective of whether they are making sales on their own behalf or on behalf of the dealers, distributors, supervisors or employers, the department may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this chapter;
- (25)~~(18)~~ "Retail sale" means any sale, lease, or rental for any purpose other than resale, sublease, or subrent ~~in the regular course of business of tangible personal property~~;
- (26) "*Ringtones*" means *digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication. "Ringtones" shall not include ringback tones or other digital files that are not stored on the purchaser's communications device*;
- (27)~~(19)~~ (a) "Sale" means the furnishing of any services included in KRS 139.200; ~~and~~ any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property; *or digital property transferred electronically* for a consideration and includes:

1. The producing, fabricating, processing, printing, or imprinting of tangible personal property *or digital property* for a consideration for purchasers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing, or imprinting;
  2. A transaction whereby the possession of *tangible personal property or digital property* is transferred, but the seller retains the title as security for the payment of the price; and
  3. A transfer for a consideration of the title or possession of tangible personal property *or digital property* which has been produced, fabricated, or printed to the special order of the purchaser.
- (b) This definition shall apply regardless of the classification of a transaction under generally accepted accounting principles, the Internal Revenue Code, or other provisions of federal, state, or local law;
- ~~(20)~~ (28) "Seller" includes every person engaged in the business of selling tangible personal property, *digital property*, or services of a kind, the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and every person engaged in making sales for resale;
- ~~(21)~~ (29) (a) "Storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property *or digital property* purchased from a retailer.
- (b) "Storage" does not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state;
- ~~(22)~~ (30) "Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses, ~~regardless of the method of delivery,~~ and includes natural, artificial, and mixed gas, electricity, water, steam, and prewritten computer software;
- ~~(23)~~ (31) "Taxpayer" means any person liable for tax under this chapter; ~~and~~
- (32) *"Transferred electronically" means accessed or obtained by the purchaser by means other than tangible storage media; and*
- ~~(24)~~ (33) (a) "Use" includes the exercise of any right or power over tangible personal property *or digital property* incident to the ownership of that property, or by any transaction in which possession is given, *or by any transaction involving digital property where the right of access is granted* ~~except that it does not include the sale of that property in the regular course of business~~.
- (b) "Use" does not include the keeping, retaining, or exercising any right or power over tangible personal property *or digital property* for the purpose of:
1. *Selling tangible personal property or digital property in the regular course of business; or*
  2. Subsequently transporting *tangible personal property* ~~it~~ outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.
- ➔ Section 2. KRS 139.105 is amended to read as follows:
- (1) For purposes of the retailer's obligation to pay or collect and remit the taxes imposed by KRS 139.200 and 139.310, the retailer shall source the retail sale, excluding sales of communications services *and digital property* as follows:
- (a) Over the counter. When the purchaser receives tangible personal property or service at a business location of the retailer, the sale is sourced to that business location;
  - (b) Delivery to a specified address. When a purchaser or purchaser's donee receives tangible personal property or service at a location specified by the purchaser, the sale is sourced to that location; or

- (c) Delivery address unknown. When the retailer of a product does not know the address where the tangible personal property or service is received, the sale is sourced to the first address listed in this paragraph that is known to the retailer:
  - 1. The address of the purchaser;
  - 2. The billing address of the purchaser; or
  - 3. The address from which the tangible personal property was shipped; from which the computer software was delivered electronically or was first available for transmission by the retailer; or from which the service was provided.
- (2) The retailer shall source communications services as follows:
  - (a) A sale of mobile telecommunications services, other than air-ground radiotelephone service and prepaid wireless calling service, shall be sourced to the customer's or other purchaser's place of primary use;
  - (b) A sale of postpaid calling service shall be sourced to the origination point of the telecommunications signal as first identified by either the retailer's telecommunications system or information received by the retailer from its service provider, where the system used to transport the signals is not that of the retailer;
  - (c) A sale of prepaid calling service or a sale of a prepaid wireless calling service shall be sourced according to the provisions of subsection (1) of this section. If the sale is of a prepaid wireless calling service and the retailer does not know the address where the service is received, the sale shall be sourced to the first of the following that is known by the retailer:
    - 1. The address of the customer available from the business records of the retailer;
    - 2. The billing address of the customer;
    - 3. The address from which the service was provided; or
    - 4. The location associated with the mobile telephone number;
  - (d) A sale of a private communications service shall be sourced as follows:
    - 1. Service for a separate charge related to a customer channel termination point shall be sourced to each level of jurisdiction in which the customer channel termination point is located.
    - 2. Service where all customer termination points are located entirely within one (1) jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.
    - 3. Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of channel are separately charged shall be sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located.
    - 4. Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are not separately billed shall be sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points;
  - (e) A sale of an ancillary service is sourced to the customer's place of primary use; and
  - (f) A sale of other communications services:
    - 1. Sold on a call-by-call basis shall be sourced based on the taxing jurisdiction where the call either originates or terminates and in which the service address is also located; or
    - 2. Sold on a basis other than a call-by-call basis shall be sourced to the customer's or other purchaser's place of primary use.
- (3) ***The retailer shall source the sale of digital property to the place of primary use. For purposes of this subsection, "place of primary use" means the street address where the end user receives the digital property or from where the end user primarily accesses the digital property.***

- (4) Nothing included in ~~subsections~~ ~~[subsection]~~ (1), ~~or~~ (2), or (3) of this section shall affect the obligation of a purchaser to remit use tax pursuant to KRS 139.310.

➔ Section 3. KRS 139.195 is amended to read as follows:

As used in KRS 139.105, 139.200, 139.215, and 139.775:

- (1) "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including caller ID services, detailed telecommunications billing, directory assistance, vertical services, conference bridging services, and voice mail services;
- (2) "Air-to-ground radiotelephone service" means a radio service, as defined in 47 C.F.R. 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;
- (3) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls;
- (4) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;
- (5)
  - (a) "Communications service" means telecommunications services and ancillary services.
  - (b) "Communications service" does not include the sale of communications service to a communications provider that is buying the communications service for sale or incorporation into a communications service for sale if:
    1. The seller separately itemizes the charges for these services on the bill provided to the purchaser; or
    2. The seller can identify, by reasonable and verifiable standards, the charges for these services from its books and records kept in the regular course of business for other purposes including nontax purposes. These services include:
      - a. Carrier access charges, excluding user access fees;
      - b. Right of access charges;
      - c. Interconnection charges paid by the provider of mobile telecommunications services or other communications providers;
      - d. Charges for the sale of unbundled network elements as defined in 47 U.S.C. sec. 153(29) on January 1, 2001, to which access is provided on an unbundled basis in accordance with 47 U.S.C. sec. 251(c)(3); and
      - e. Charges for use of facilities for providing or receiving communications service;
- (6) "Conference bridging services" means an ancillary service that links two (2) or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference bridging services" does not include the telecommunications services used to reach the conference bridge;
- (7) "Customer" means the person or entity that contracts with the seller of communications services. If the end user of communications services is not the contracting party, the end user of the communications service is the customer of the communications service, but only as it applies to the sourcing of the sale of communications services as provided in KRS 139.105. "Customer" does not include a reseller of communications service or a serving carrier providing mobile telecommunications service under an agreement to serve the customer outside the home service provider's licensed service area;
- (8) "Customer channel termination point" means the location where the customer or other purchaser either inputs or receives communications;
- (9) "Detailed telecommunications billing service" means an ancillary service of separately stated information pertaining to individual calls on a customer's billing statement;
- (10) "Directory assistance" means an ancillary service of providing telephone number information or address information;

- (11) "End user" means the person who utilized the communications service. In the case of an entity, "end user" means the individual who utilized the service on behalf of the entity;
- (12) "Fixed wireless service" means a telecommunications service that provides radio communications between fixed points;
- (13) "Home service provider" means the same as provided in 4 U.S.C. sec. 124(5);
- (14) "International" means a service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a United States territory or possession;
- (15) "Interstate" means a service that originates in one (1) state of the United States or a United States territory or possession and terminates in a different state of the United States or United States territory or possession;
- (16) "Intrastate" means a service that originates in one (1) state of the United States or a United States territory or possession and terminates in the same state of the United States or a United States territory or possession;
- (17) "Mobile telecommunications service" means the same as provided in 4 U.S.C. sec. 124(7);
- (18) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and termination points or the origination or termination points of the transmission, conveyance, or routing are not fixed, including, by the way of example only, telecommunications services that are provided by a commercial mobile radio service provider;
- (19) "Paging service" means a telecommunications service that provides a transmission of coded radio signals for the purpose of activating specific pagers. Such transmissions may include messages or sounds;
- (20) "Pay telephone service" means a telecommunications service provided through any pay telephone;
- (21) "Place of primary use" means the street address where the customer's or other purchaser's use of the communications service primarily occurs, and that is the residential street address or the primary business street address of the customer or other purchaser. In the case of mobile telecommunications service, "place of primary use" shall be within the licensed service area of the home service provider;
- (22) "Postpaid calling service" means a telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid service except that it is not exclusively a telecommunications service;
- (23) "Prepaid calling service" means the right to access exclusively telecommunications services, which are paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;
- (24) "Prepaid wireless calling service" means a telecommunications service that:
  - (a) Provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services;
  - (b) Must be paid for in advance; and
  - (c) Is sold in predetermined units of dollars of which the number declines with use in a known amount;
- (25) "Private communications service" means a telecommunications service that entitles the customer or other purchaser to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of a channel or channels;
- (26) ~~"Ring tones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication;~~

- ~~(27)~~ (a) "Service address" means the location of communications equipment to which a customer's or other purchaser's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.
- (b) If the location of the communications equipment is not known, "service address" means the origination point of the signal of the communications services first identified by either the seller's communications system or in information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.
- (c) If the location cannot be determined according to the guidelines set forth in paragraphs (a) and (b) of this subsection, "service address" means the location of the customer's or other purchaser's place of primary use;
- ~~(27)~~~~(28)~~ "Telecommunications nonrecurring charges" means an amount billed for the installation, connection, change, or initiation of telecommunications service received by the customer;
- ~~(28)~~~~(29)~~ (a) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points.
- (b) "Telecommunications service" includes but is not limited to:
1. The transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice over Internet protocol (VOIP) services or is classified by the Federal Communications Commission as enhanced or value-added;
  2. Paging service;
  3. Telegraph and teletypewriter services;
  4. Local and long distance telephone services;
  5. Fixed wireless service;
  6. Mobile wireless service;
  7. Private communications service;
  8. Telecommunications nonrecurring charges;
  9. Value-added nonvoice data service;
  10. 800 service; and
  11. 900 service.
- (c) "Telecommunications service" does not include:
1. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information;
  2. Installation or maintenance of wiring or equipment on a customer's premises;
  3. Tangible personal property *or digital property*;
  4. Advertising, including but not limited to directory advertising;
  5. Billing and collection services provided to third parties;
  6. Internet access service as defined in 47 U.S.C. sec. 151;
  7. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable services as defined in 47 U.S.C. sec. 522(6) and audio and video

programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3;

8. Ancillary services;
  9. Digital products delivered electronically, including but not limited to software, music, video, rating materials, or ring tones; or
  10. Telephone answering services;
- (29)~~(30)~~ "Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications service in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for the purpose other than transmission, conveyance, or routing;
- (30)~~(31)~~ "Vertical service" means an ancillary service that is offered in connection with one (1) or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services;
- (31)~~(32)~~ "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to utilize the voice mail service;
- (32)~~(33)~~ "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission; and
- (33)~~(34)~~ "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live serve. "900 service" does not include the charge for collections services provided to the seller of the telecommunications services to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service and any subsequent numbers designated by the Federal Communications Commission.

➔Section 4. KRS 139.200 is amended to read as follows:

A tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross receipts derived from:

- (1) Retail sales *of*:
  - (a) ***Tangible personal property***, regardless of the method of delivery, made within this Commonwealth; and
  - (b) ***Digital property regardless of whether***:
    1. ***The purchaser has the right to permanently use the property***;
    2. ***The purchaser's right to access or retain the property is not permanent***; or
    3. ***The purchaser's right of use is conditioned upon continued payment***; and
- (2) The furnishing of the following:
  - (a) The rental of any room or rooms, lodgings, or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. The tax shall not apply to rooms, lodgings, or accommodations supplied for a continuous period of thirty (30) days or more to a person;
  - (b) Sewer services;
  - (c) The sale of admissions except those taxed under KRS 138.480;
  - (d) Prepaid calling service and prepaid wireless calling service;
  - (e) Intrastate, interstate, and international communications services as defined in KRS 139.195, except the furnishing of pay telephone service as defined in KRS 139.195;
  - (f) ~~Ring tones as defined in KRS 139.195, to a purchaser whose place of primary use is in this state; and~~

~~(e)~~ Distribution, transmission, or transportation services for natural gas that is for storage, use, or other consumption in this state, excluding those services furnished:

1. For natural gas that is classified as residential use as provided in KRS 139.470(8); or
2. To a seller or reseller of natural gas.

➔ Section 5. KRS 139.215 is amended to read as follows:

- (1) Unless otherwise provided by federal law, the following rules shall apply to a bundled transaction, as defined in subsection (3) of this section, that includes any or all of a telecommunications service, ancillary service, Internet access, audio programming, or video programming:
  - (a) If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable product is subject to tax unless the provider can identify, by reasonable and verifiable standards, the portion of the products that are nontaxable from its books and records that are kept in the regular course of business for other purposes, including nontax purposes; or
  - (b) If the price is attributable to products that are subject to tax at different rates, the total price shall be treated as attributable to the products subject to tax at the highest rate unless the provider can identify, by reasonable and verifiable standards, the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including nontax purposes.
- (2) The following rules shall apply to all bundled transactions, except as provided in subsection (1) of this section:
  - (a) If the price is attributable to products where taxable and exempt tangible personal property have been bundled together and sold by the retailer as a bundled transaction, the entire charge is subject to tax;~~{or}~~
  - (b) If the price is attributable to products where taxable products and exempt services have been bundled together and sold by the retailer as a bundled transaction, the entire charge is subject to tax.
- (3)~~{(a)}~~ For purposes of this section:~~{}~~
  - (a) "Bundled transaction" means the retail sale of two (2) or more products, except real property and services to real property, where:
    1. The products are otherwise distinct and identifiable; and
    2. The products are sold for one (1) nonitemized price;~~{}~~
  - (b) "Distinct and identifiable products" do not include:
    1. Packaging such as containers, boxes, sacks, bags, bottles, wrapping materials, labels, tags, or instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples include grocery sacks, shoe boxes, dry cleaning garment bags, and express delivery envelopes and boxes.
    2. A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; or
    3. Items included in the definition of sales price: *and*~~{}~~
  - (c) "One (1) nonitemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form, including but not limited to an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.
- (4) A "bundled transaction" does not include:
  - (a) The retail sale of any products in which the sales price varies or is negotiable, based on the selection by the purchaser of the products included in the transaction;
  - (b) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;

- (c) *The retail sale of digital property and a service where the digital property is essential to the use of the service, and is provided exclusively in connection with the service, and if the true object of the transaction is the service;*
- (d) The retail sale of services where one (1) service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;
- (e)~~(d)~~ A transaction that includes taxable products and nontaxable products if the purchase price or sales price of the taxable products is de minimis. For purposes of this section, "de minimis" means the seller's purchase price or the sales price of the taxable products is ten percent (10%) or less of the total purchase price or sales price of the bundled products. Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers shall not use a combination of the purchase price and the sales price of the products to determine if the taxable products are de minimis. Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or
- (f)~~(e)~~ The retail sale of exempt tangible personal property and taxable tangible personal property where:
1. The transaction includes:
    - a. Food and food ingredients as defined in KRS 139.485;
    - b. Drugs as defined in KRS 139.472;
    - c. Durable medical equipment as defined in KRS 139.472;
    - d. Mobility enhancing equipment as defined in KRS 139.472;
    - e. Medical supplies; or
    - f. Over-the-counter drugs *as defined in Section 17 of this Act*~~[-For purposes of this section, "over the counter drugs" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. sec. 201.66. The over the counter drug label shall include a "drug facts" panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation]; and~~
  2. The seller's purchase price or sales price of the taxable tangible personal property is fifty percent (50%) or less of the total purchase price or sales price of the bundled tangible personal property. Sellers shall not use a combination of the purchase price and the sales price of the tangible personal property when making the fifty percent (50%) determination for a transaction.

➔Section 6. KRS 139.220 is amended to read as follows:

It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax levied by KRS 139.200 or required to be collected under KRS 139.340 or any part thereof will be assumed or absorbed by the retailer or that the tax will not be added to the selling price of the *tangible personal property or digital property* sold or that if added the tax or any part thereof will be refunded.

➔Section 7. KRS 139.260 is amended to read as follows:

For the purpose of the proper administration of this chapter and to prevent evasion of the duty to collect the taxes imposed by KRS 139.200 and 139.310, it shall be presumed that all gross receipts and all tangible personal property *and digital property* sold by any person for delivery *or access* in this state are subject to the tax until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is either:

- (1) Purchased for resale according to the provisions of KRS 139.270;
- (2) Purchased through a properly executed certificate of exemption in accordance with KRS 139.270;
- (3) Purchased according to regulations of the Department of Revenue governing a direct pay authorization; or
- (4) Purchased under a form issued pursuant to KRS 139.777.

➔Section 8. KRS 139.270 is amended to read as follows:

- (1) The resale certificate or certificate of exemption relieves the retailer or seller from the burden of proof only if taken in good faith from a person who, at the time of purchasing the tangible personal property *or digital property*:
- (a) Indicates an intention to sell it in the regular course of business by executing the resale certificate; or
  - (b) Indicates that the property purchased will be used in an exempt manner by executing a certificate of exemption.
- (2) This relief from liability provided to the retailer or the seller in subsection (1) of this section does not apply to a retailer or seller who:
- (a) Fraudulently fails to collect the tax;
  - (b) Solicits purchasers to participate in the unlawful claiming of an exemption; or
  - (c) Accepts an exemption certificate when the purchaser claims an entity-based exemption when:
    - 1. The product sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the retailer or seller; and
    - 2. The state in which that location resides provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in that state.
- For purposes of this paragraph, "entity-based exemption" means an exemption based on who purchases the product or who sells the product. An exemption available to all individuals shall not be considered an entity-based exemption.
- (3) (a) "Good faith" shall be demonstrated by the retailer or seller if the retailer or seller:
- 1. Accepts, within ninety (90) days subsequent to the date of sale, a properly completed resale certificate or certificate of exemption; and
  - 2. Maintains a file of the certificate or data elements in accordance with KRS 139.720.
- (b) If the retailer or seller has not obtained an exemption certificate or resale certificate or all relevant data elements within ninety (90) days subsequent to the date of sale, in keeping with the good faith standard, the seller or retailer may offer additional documentation to the department that the transaction is not subject to tax after the ninety (90) day period which the department may consider.
- (4) If the department later finds that the retailer or seller exercised good faith according to the provisions of subsection (3) of this section but that the purchaser used the property in a manner that would not have qualified for resale status or the purchaser issued a certificate of exemption and used the property in some other manner or for some other purpose, the department shall hold the purchaser liable for the remittance of the tax and may apply penalties provided in KRS 139.990.

➔Section 9. KRS 139.280 is amended to read as follows:

- (1) The resale certificate shall:
- (a) Be signed by and bear the name and address of the purchaser;
  - (b) Indicate the number of the permit issued to the purchaser;
  - (c) Indicate the general character of the tangible personal property *or digital property* sold by the purchaser in the regular course of business.
- (2) The certificate shall be substantially in a form as the department may prescribe.
- (3) A signature shall not be required if the purchaser provides the retailer with an electronic resale certificate.

➔Section 10. KRS 139.290 is amended to read as follows:

- (1) If a retailer or seller who gives a resale certificate makes any use of the *tangible personal property or digital property* other than retention, demonstration or display while holding it for sale in the regular course of business, the use shall be taxable to the retailer or seller as of the time the property is first used by the retailer or seller, and the sales price of the property to the retailer or seller shall be deemed the measure of the tax.

- (2) If the sole use of the property by the retailer other than retention, demonstration or display in the regular course of business is the rental of the property while holding it for sale, the retailer shall include in gross receipts the amount of the rental charged rather than the sales price of the property.
- (3) If a retailer sells tangible personal property *or digital property* before making any use thereof, other than retention, demonstration, or display while holding it for sale in the regular course of business, the retailer may take a deduction of the purchase price of the property if, with respect to its purchase, the retailer has reimbursed the vendor for the sales tax or has paid the use tax. If a deduction is taken by the retailer, no refund or credit shall be allowed to the vendor with respect to the sale of that property.

➔Section 11. KRS 139.310 is amended to read as follows:

- (1) An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property *and digital property* purchased ~~on and after July 1, 1990,~~ for storage, use, or other consumption in this state at the rate of six percent (6%) of the sales price of the property.
- (2) ***The excise tax applies to the purchase of digital property regardless of whether:***
  - (a) ***The purchaser has the right to permanently use the goods;***
  - (b) ***The purchaser's right to access or retain the digital property is not permanent; or***
  - (c) ***The purchaser's right of use is conditioned upon continued payment.***

➔Section 12. KRS 139.330 is amended to read as follows:

Every person storing, using or otherwise consuming in this state tangible personal property *or digital property* purchased from a retailer is liable for the use tax levied under KRS 139.310. His liability is not extinguished until the tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the department, under such rules and regulations as it may prescribe, to collect the tax and who is, for the purpose of this chapter relating to the use tax, regarded as a retailer engaged in business in this state, given to the purchaser pursuant to KRS 139.340 is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

➔Section 13. KRS 139.340 is amended to read as follows:

- (1) Except as provided in KRS 139.470 and 139.480, every retailer engaged in business in this state shall collect the tax imposed by KRS 139.310 from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the department. The taxes collected or required to be collected by the retailer under this section shall be deemed to be held in trust for and on account of the Commonwealth.
- (2) "Retailer engaged in business in this state" as used in KRS 139.330 and this section includes any of the following:
  - (a) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary or any other related entity, representative, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business. Property owned by a person who has contracted with a printer for printing, which consists of the final printed product, property which becomes a part of the final printed product, or copy from which the printed product is produced, and which is located at the premises of the printer, shall not be deemed to be an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business maintained, occupied, or used by the person;
  - (b) Any retailer having any representative, agent, salesman, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property *or digital property*. An unrelated printer with which a person has contracted for printing shall not be deemed to be a representative, agent, salesman, canvasser, or solicitor for the person;
  - (c) Any retailer soliciting orders for tangible personal property *or digital property* from residents of this state on a continuous, regular, or systematic basis in which the solicitation of the order, placement of the order by the customer or the payment for the order utilizes the services of any financial institution, telecommunication system, radio or television station, cable television service, print media, or other facility or service located in this state;
  - (d) Any retailer deriving receipts from the lease or rental of tangible personal property situated in this state;

- (e) Any retailer soliciting orders for tangible personal property *or digital property* from residents of this state on a continuous, regular, systematic basis if the retailer benefits from an agent or representative operating in this state under the authority of the retailer to repair or service tangible personal property *or digital property* sold by the retailer; or
- (f) Any retailer located outside Kentucky that uses a representative in Kentucky, either full-time or part-time, if the representative performs any activities that help establish or maintain a marketplace for the retailer, including receiving or exchanging returned merchandise.

➔Section 14. KRS 139.390 is amended to read as follows:

Every retailer selling tangible personal property *or digital property* for storage, use or other consumption in this state shall register with the department and give:

- (1) The name and address of all agents operating in this state;
- (2) The location of all distribution or sales houses or offices or other places of business in this state;
- (3) Such other information as the department may require.

➔Section 15. KRS 139.450 is amended to read as follows:

It shall be presumed that tangible personal property shipped or brought to this state by the purchaser ~~[after June 30, 1990,]~~ was purchased from a retailer ~~[on or after July 1, 1990,]~~ for storage, use, or other consumption in this state.

➔Section 16. KRS 139.470 is amended to read as follows:

There are excluded from the computation of the amount of taxes imposed by this chapter:

- (1) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property *or digital property* which this state is prohibited from taxing under the Constitution or laws of the United States, or under the Constitution of this state;
- (2) Gross receipts from sales of, and the storage, use, or other consumption in this state of:
  - (a) Nonreturnable and returnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container; and
  - (b) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling;

As used in this section the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers";

- (3) Gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property used for the performance of a lump-sum, fixed-fee contract of public works executed prior to February 5, 1960;
- (4) Gross receipts from occasional sales of tangible personal property *or digital property* and the storage, use, or other consumption in this state of tangible personal property *or digital property*, the transfer of which to the purchaser is an occasional sale;
- (5) Gross receipts from sales of tangible personal property to a common carrier, shipped by the retailer via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier;
- (6) Gross receipts from sales of tangible personal property sold through coin-operated bulk vending machines, if the sale amounts to fifty cents (\$0.50) or less, if the retailer is primarily engaged in making the sales and maintains records satisfactory to the department. As used in this subsection, "bulk vending machine" means a vending machine containing unsorted merchandise which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer;
- (7) Gross receipts from sales to any cabinet, department, bureau, commission, board, or other statutory or constitutional agency of the state and gross receipts from sales to counties, cities, or special districts as defined in KRS 65.005. This exemption shall apply only to purchases of *tangible personal property, digital property,*

or services for use solely in the government function. A purchaser not qualifying as a governmental agency or unit shall not be entitled to the exemption even though the purchaser may be the recipient of public funds or grants;

- (8) (a) Gross receipts from the sale of sewer services, water, and fuel to Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. As used in this subsection, "fuel" shall include but not be limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood. Determinations of eligibility for the exemption shall be made by the Department of Revenue;
- (b) In making the determinations of eligibility, the department shall exempt from taxation all gross receipts derived from sales:
1. Classified as "residential" by a utility company as defined by applicable tariffs filed with and accepted by the Public Service Commission;
  2. Classified as "residential" by a municipally owned electric distributor which purchases its power at wholesale from the Tennessee Valley Authority;
  3. Classified as "residential" by the governing body of a municipally owned electric distributor which does not purchase its power from the Tennessee Valley Authority, if the "residential" classification is reasonably consistent with the definitions of "residential" contained in tariff filings accepted and approved by the Public Service Commission with respect to utilities which are subject to Public Service Commission regulation.

If the service is classified as residential, use other than for "residential" purposes by the customer shall not negate the exemption;

- (c) The exemption shall not apply if charges for sewer service, water, and fuel are billed to an owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle park other than residential classification; and
- (d) The exemption shall apply also to residential property which may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by the stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight (98) years;
- (9) Any rate increase for school taxes and any other charges or surcharges added to the total amount of a residential telecommunications service. For purposes of this section, "residential telecommunications service" means a telecommunications service as defined in KRS 139.195 or an ancillary service as defined in KRS 139.195 provided to:
- (a) An individual for personal use at a residential address, including an individual dwelling unit such as an apartment; or
  - (b) An individual residing in an institution such as a school or nursing home if the service is paid for by an individual resident rather than the institution;
- (10) Gross receipts from sales to an out-of-state agency, organization, or institution exempt from sales and use tax in its state of residence when that agency, organization, or institution gives proof of its tax-exempt status to the retailer and the retailer maintains a file of the proof;
- (11) Gross receipts derived from the sale of, and the storage, use, or other consumption in this state of, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property at a plant facility and which will be for sale. The property shall be regarded as having been purchased for resale. "Plant facility" shall have the same meaning as defined in KRS 139.010. For purposes of this subsection, a manufacturer or industrial processor includes an individual or business entity that performs only part of the manufacturing or industrial processing activity and the person or business entity need not take title to tangible personal property that is incorporated into, or becomes the product of, the activity.
- (a) Industrial processing includes refining, extraction of petroleum and natural gas, mining, quarrying, fabricating, and industrial assembling. As defined herein, tangible personal property to be used in the manufacturing or industrial processing of tangible personal property which will be for sale shall mean:
    1. Materials which enter into and become an ingredient or component part of the manufactured product;

2. Other tangible personal property which is directly used in manufacturing or industrial processing, if the property has a useful life of less than one (1) year. Specifically these items are categorized as follows:
  - a. Materials. This refers to the raw materials which become an ingredient or component part of supplies or industrial tools exempt under subdivisions b. and c. below.
  - b. Supplies. This category includes supplies such as lubricating and compounding oils, grease, machine waste, abrasives, chemicals, solvents, fluxes, anodes, filtering materials, fire brick, catalysts, dyes, refrigerants, explosives, etc. The supplies indicated above need not come in direct contact with a manufactured product to be exempt. "Supplies" does not include repair, replacement, or spare parts of any kind.
  - c. Industrial tools. This group is limited to hand tools such as jigs, dies, drills, cutters, rolls, reamers, chucks, saws, spray guns, etc., and to tools attached to a machine such as molds, grinding balls, grinding wheels, dies, bits, cutting blades, etc. Normally, for industrial tools to be considered directly used in manufacturing, they shall come into direct contact with the product being manufactured; and
3. Materials and supplies that are not reusable in the same manufacturing process at the completion of a single manufacturing cycle, excluding repair, replacement, or spare parts of any kind. A single manufacturing cycle shall be considered to be the period elapsing from the time the raw materials enter into the manufacturing process until the finished product emerges at the end of the manufacturing process.
  - (b) It shall be noted that in none of the three (3) categories is any exemption provided for repair, replacement, or spare parts. Repair, replacement, or spare parts shall not be considered to be materials, supplies, or industrial tools directly used in manufacturing or industrial processing. "Repair, replacement, or spare parts" shall have the same meaning as set forth in KRS 139.010;
- (12) Any water use fee paid or passed through to the Kentucky River Authority by facilities using water from the Kentucky River basin to the Kentucky River Authority in accordance with KRS 151.700 to 151.730 and administrative regulations promulgated by the authority;
- (13) Gross receipts from the sale of newspaper inserts or catalogs purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is retailer's shipping point or purchaser's destination.
  - (a) As used in this subsection:
    1. "Catalogs" means tangible personal property that is printed to the special order of the purchaser and composed substantially of information regarding goods and services offered for sale; and
    2. "Newspaper inserts" means printed materials that are placed in or distributed with a newspaper of general circulation.
  - (b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the department;
- (14) Gross receipts from the sale of water used in the raising of equine as a business;
- (15) Gross receipts from the sale of metal retail fixtures manufactured in this state and purchased for storage, use, or other consumption outside this state and delivered by the retailer's own vehicle to a location outside this state, or delivered to the United States Postal Service, a common carrier, or a contract carrier for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer or an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or the purchaser's destination.
  - (a) As used in this subsection, "metal retail fixtures" means check stands and belted and nonbelted checkout counters, whether made in bulk or pursuant to specific purchaser specifications, that are to be used directly by the purchaser or to be distributed by the purchaser.

- (b) The retailer shall be responsible for establishing that delivery was made to a non-Kentucky location through shipping documents or other credible evidence as determined by the department;
- (16) Gross receipts from the sale of unenriched or enriched uranium purchased for ultimate storage, use, or other consumption outside this state and delivered to a common carrier in this state for delivery outside this state, regardless of whether the carrier is selected by the purchaser or retailer, or is an agent or representative of the purchaser or retailer, or whether the F.O.B. is the retailer's shipping point or purchaser's destination;
- (17) Amounts received from a tobacco buydown. As used in this subsection, "buydown" means an agreement whereby an amount, whether paid in money, credit, or otherwise, is received by a retailer from a manufacturer or wholesaler based upon the quantity and unit price of tobacco products sold at retail that requires the retailer to reduce the selling price of the product to the purchaser without the use of a manufacturer's or wholesaler's coupon or redemption certificate;
- (18) Gross receipts from the sale of *tangible personal property or digital property* returned by a purchaser when the full sales price is refunded either in cash or credit. This exclusion shall not apply if the purchaser, in order to obtain the refund, is required to purchase other *tangible personal property or digital property* at a price greater than the amount charged for the property that is returned;
- (19) Gross receipts from the sales of gasoline and special fuels subject to tax under KRS Chapter 138;
- (20) The amount of any tax imposed by the United States upon or with respect to retail sales, whether imposed on the retailer or the consumer, not including any manufacturer's excise or import duty;
- (21) Gross receipts from the sale of any motor vehicle as defined in KRS 138.450 which is:
  - (a) Sold to a Kentucky resident, registered for use on the public highways, and upon which any applicable tax levied by KRS 138.460 has been paid; or
  - (b) Sold to a nonresident of Kentucky if the nonresident registers the motor vehicle in a state that:
    - 1. Allows residents of Kentucky to purchase motor vehicles without payment of that state's sales tax at the time of sale; or
    - 2. Allows residents of Kentucky to remove the vehicle from that state within a specific period for subsequent registration and use in Kentucky without payment of that state's sales tax;
- (22) Gross receipts from the sale of a semi-trailer as defined in KRS 189.010(12) and trailer as defined in KRS 189.010(17);
- (23) Gross receipts from the sale of distilled spirits, wine, and malt beverages not consumed on the premises licensed for their sale under the provisions of KRS Chapter 243; and
- (24) Gross receipts from the first fifty thousand dollars (\$50,000) in sales of admissions to county fairs held in Kentucky in any calendar year by a nonprofit county fair board.

➔Section 17. KRS 139.472 is amended to read as follows:

- (1) Notwithstanding any other provisions of this chapter, the taxes imposed by this chapter shall not apply to the sale or purchase of:
  - (a) A drug purchased for the treatment of a human being for which a prescription is required by state or federal law, whether the drug is dispensed by a licensed pharmacist, administered by a physician or other health care provider, or distributed as a free sample to or from a physician's office;
  - (b) An over-the-counter drug purchased for the treatment of a human being for which a prescription is issued;
  - (c) Medical oxygen and oxygen delivery equipment purchased for home use. Oxygen delivery equipment includes:
    - 1. High pressure cylinders, cryogenic tanks, oxygen concentrators, or similar medical oxygen delivery equipment including repair and replacement parts for the equipment; and
    - 2. Tubes, masks, and similar items required for the delivery of oxygen to the patient;
  - (d) Insulin and diabetic supplies, including hypodermic syringes, needles, and sugar (urine and blood) testing materials purchased by an individual for private use;

- (e) Colostomy, urostomy, or ileostomy supplies purchased by an individual for private use;
  - (f) Prosthetic devices purchased by any health care provider for use in the treatment of a specific individual or purchased by an individual as prescribed by a person authorized under the laws of the Commonwealth to issue prescriptions;
  - (g) Prosthetic devices that are individually designed or created for an individual regardless of the purchaser;
  - (h) Mobility enhancing equipment for which a prescription is issued; and
  - (i) ***Durable medical equipment including hospital beds for which a prescription is issued*** ~~[purchased for private, noncommercial use].~~
- (2) Except as specifically provided in subsection (1) of this section, supplies or equipment used to deliver a drug to a patient are taxable.
- (3) As used in this section:
- (a) "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages as defined in KRS 139.485, that is recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or a supplement to any of them, or is:
    1. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans; or
    2. Intended to affect the structure or any function of the human body;
  - (b) "Grooming and hygiene products" means soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions, regardless of whether the items meet the definition of an over-the-counter drug;
  - (c) 1. "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. sec. 201.66. The "over-the-counter drug" label shall include:
    - a. A "Drug Facts" panel; or
    - b. A statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation.
 2. "Over-the-counter drug" shall not include grooming and hygiene products;
  - (d) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a person authorized under the laws of the Commonwealth to prescribe a drug;
  - (e) 1. "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:
    - a. Artificially replace a missing portion of the body;
    - b. Prevent or correct a physical deformity or malfunction; or
    - c. Support a weak or deformed portion of the body.
 2. "Prosthetic device" shall not include any of the following:
    - a. Corrective eyeglasses;
    - b. Contact lenses; or
    - c. Dental prosthesis;
  - (f) 1. "Mobility enhancing equipment" means equipment, including repair and replacements part for same, which:
    - a. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

- b. Is not generally used by persons with normal mobility; and
  - c. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.
2. "Mobility enhancing equipment" shall not include durable medical equipment; and
- (g) 1. "Durable medical equipment" means equipment, including repair and replacement parts for same, which:
- a. Can withstand repeated use;
  - b. Is primarily and customarily used to serve a medical purpose;
  - c. Generally is not useful to a person in the absence of illness or injury; and
  - d. Is not worn in or on the body.
2. "Durable medical equipment" shall not include mobility enhancing equipment or oxygen delivery equipment that is not worn in or on the body.
3. As used in this paragraph, "repair and replacement parts" includes all components or attachments used in connection with durable medical equipment.

→Section 18. KRS 139.495 is amended to read as follows:

The taxes imposed by this chapter shall apply to resident, nonprofit educational, charitable, and religious institutions which have qualified for exemption from income taxation under Section 501(c)(3) of the Internal Revenue Code as follows:

- (1) Tax does not apply to sales of tangible personal property, *digital property*, or services to such institutions provided the *tangible personal* property, *digital property*, or service is to be used solely within the educational, charitable, or religious function.
- (2) Tax does not apply to sales of food to students in school cafeterias or lunchrooms.
- (3) Tax does not apply to sales by school bookstores of textbooks, workbooks, and other course materials.
- (4) Tax does not apply to sales by nonprofit, school sponsored clubs and organizations, provided such sales do not include tickets for athletic events.
- (5) An institution shall be entitled to a refund equal to twenty-five percent (25%) of the tax collected on its sale of donated goods if the refund is used exclusively as reimbursement for capital construction costs of additional retail locations in this state, provided the institution:
  - (a) Routinely sells donated items;
  - (b) Provides job training and employment to individuals with workplace disadvantages and disabilities;
  - (c) Spends at least seventy-five percent (75%) of its annual revenue on job training, job placement, or other related community services;
  - (d) Submits a refund application to the department within sixty (60) days after the new retail location opens for business; and
  - (e) Provides records of capital construction costs for the new retail location and any other information the department deems necessary to process the refund.

The maximum refund allowed for any location shall not exceed one million dollars (\$1,000,000). As used in this subsection, "capital construction cost" means the cost of construction of any new facilities or the purchase and renovation of any existing facilities, but does not include the cost of real property other than real property designated as a brownfield site as defined in KRS 65.680(4).

- (6) Notwithstanding any other provision of law to the contrary, refunds under subsection (5) of this section shall be made directly to the institution. Interest shall not be allowed or paid on the refund. The department may examine any refund within four (4) years from the date the refund application is received. Any overpayment shall be subject to the interest provisions of KRS 131.183 and the penalty provisions of KRS 131.180.
- (7) All other sales made by nonprofit educational, charitable, and religious institutions are taxable and the tax may be passed on to the customer as provided in KRS 139.210.

➔Section 19. KRS 139.510 is amended to read as follows:

- (1) The tax levied by KRS 139.310 shall not apply with respect to the storage, use, or other consumption of tangible personal property *or digital property* in this state upon which a tax substantially identical to the tax levied under KRS 139.200 (not including any special excise taxes such as are imposed on alcoholic beverages, cigarettes, and the like) equal to or greater than the amount of tax imposed by KRS 139.310 has been *legally* paid in another state. Proof of payment of such tax shall be according to rules and regulations of the department. If the amount of tax paid in another state is not equal to or greater than the amount of tax imposed by KRS 139.310, then the taxpayer shall pay to the department an amount sufficient to make the tax paid in the other state and in this state equal to the amount imposed by KRS 139.310. No credit shall be given under this section for sales taxes paid in another state if that state does not grant credit for sales taxes paid in this state.
- (2) To prevent actual multistate taxation of a communications service subject to taxation under this chapter, any provider or purchaser, upon proof that the provider or purchaser has paid a tax in another state on the same communications services, shall be allowed a credit against the tax imposed by this chapter to the extent of the amount of the tax legally paid in the other state.

➔Section 20. KRS 139.550 is amended to read as follows:

- (1) On or before the twentieth day of the month following each calendar month, a return for the preceding month shall be filed with the department in a form the department may prescribe.
- (2) For purposes of the sales tax, a return shall be filed by every retailer or seller. For purposes of the use tax, a return shall be filed by every retailer engaged in business in the state and by every person purchasing tangible personal property *or digital property*, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. If a retailer's responsibilities have been assumed by a certified service provider as defined by KRS 139.795, the certified service provider shall file the return.
- (3) Returns shall be signed by the person required to file the return or by a duly authorized agent but need not be verified by oath.
- (4) Persons not regularly engaged in selling at retail and not having a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at fairs, circuses, carnivals, and the like, shall report and remit the tax on a nonpermit basis, under rules as the department shall provide for the efficient collection of the sales tax on sales.
- (5) The return shall show the amount of the taxes for the period covered by the return and other information the department deems necessary for the proper administration of this chapter.

➔Section 21. KRS 139.700 is amended to read as follows:

The department may, in its discretion, upon application authorize the collection of the tax imposed herein by any retailer not engaged in business within this state who, to the satisfaction of the department furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued a permit to collect such tax in such manner, and subject to such regulation and agreements as the department shall prescribe. When so authorized, it shall be the duty of such retailer to collect the tax upon all tangible personal property *or digital property* sold to his knowledge for use within this state, in the same manner and subject to the same requirements as a retailer engaged in business within this state.

➔Section 22. KRS 139.720 is amended to read as follows:

- (1) Every seller, every retailer, and every person storing, using and otherwise consuming in this state tangible personal property *or digital property* purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the department may require.
- (2) Every such seller, retailer, or person who files the returns required under this chapter shall keep such records for not less than four (4) years from the making of such records unless the department in writing sooner authorizes their destruction.

➔Section 23. KRS 139.730 is amended to read as follows:

In the administration of the sales and use tax, the department may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property *or*

**digital property**, the storage, use, or other consumption of which is subject to the tax. The report shall be filed at the time specified by the department and shall contain such information as the department may require.

➔Section 24. KRS 139.740 is amended to read as follows:

- (1) No judgment shall be entered and no garnishment or attachment shall be permitted by any court in this Commonwealth in an action for the collection of a debt arising out of the sale of tangible personal property *or digital property* unless an affidavit containing a certificate of service is executed by the plaintiff to the effect that all use taxes due the Commonwealth have been paid.
- (2) Prior to the filing of the affidavit, required under subsection (1) of this section, the plaintiff (including counterclaimants or crossclaimants) shall, by first-class mail, serve upon the department a copy of the affidavit. Within fifteen (15) days from the date of the filing of the affidavit the department may file a counteraffidavit. In such event no judgment shall be entered or garnishment or attachment issued until proof has been taken concerning the matters at issue in the affidavit and counteraffidavit.
- (3) In the event the use tax levied by this chapter is found to be due and unpaid the plaintiff may elect to pay the tax to the department, and the amount of the tax paid by the plaintiff shall be recovered as a part of any judgment entered. If the plaintiff does not elect to pay the use tax found to be due and unpaid, judgment for the amount of the tax shall be awarded to the Commonwealth.
- (4) Any judgment awarded to the Commonwealth under this section shall constitute a prior claim to any judgment obtained by the plaintiff.
- (5) Tax as defined herein includes interest accrued thereon at the tax interest rate as defined in KRS 131.010(6).
- (6) The provisions of this section shall not apply to a plaintiff holding a retail permit issued pursuant to this chapter.

➔Section 25. This Act takes effect July 1, 2009.

**Signed by the Governor March 24, 2009.**

## CHAPTER 74

### (HB 408)

AN ACT relating to state funds allocations to local school districts.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 157.360 is amended to read as follows:

- (1) In determining the cost of the program to support education excellence in Kentucky, the statewide guaranteed base funding level, as defined in KRS 157.320, shall be computed by dividing the amount appropriated for this purpose by the prior year's statewide average daily attendance.
- (2) Each district shall receive an amount equal to the base funding level for each pupil in average daily attendance in the district in the previous year. Each district's base funding level shall be adjusted by the following factors:
  - (a) The number of at-risk students in the district. At-risk students shall be identified as those approved for the free lunch program under state and federal guidelines. The number of at-risk students shall be multiplied by a factor to be established by the General Assembly. Funds generated under this paragraph may be used to pay for:
    1. Alternative programs for students who are at risk of dropping out of school before achieving a diploma; and
    2. A hazardous duty pay supplement as determined by the local board of education to the teachers who work in alternative programs with students who are violent or assaultive;
  - (b) The number and types of exceptional children in the district as defined by KRS 157.200. Specific weights for each category of exceptionality shall be used in the calculation of the add-on factor for exceptional children; and
  - (c) Transportation costs. The per-pupil cost of transportation shall be calculated as provided by KRS 157.370. Districts which contract to furnish transportation to students attending nonpublic schools may

adopt any payment formula which assures that no public school funds are used for the transportation of nonpublic students.

- (3) The program to support education excellence in Kentucky shall be fully implemented by the 1994-95 school year.
- (4) (a) Except for those schools which have implemented school-based decision making, the *commissioner of education*~~{chief state school officer}~~ shall enforce maximum class sizes for every academic course requirement in all grades except in vocal and instrumental music, and physical education classes. Except as provided in subsection (5) of this section, the maximum number of pupils enrolled in a class shall be as follows:
  1. Twenty-four (24) in primary grades (kindergarten through third grade);
  2. Twenty-eight (28) in grade four (4);
  3. Twenty-nine (29) in grades five (5) and six (6);
  4. Thirty-one (31) in grades seven (7) to twelve (12).
- (b) Except for those schools which have implemented school-based decision making, class size loads for middle and secondary school classroom teachers shall not exceed the equivalent of one hundred fifty (150) pupil hours per day.
- (c) The *commissioner of education*~~{chief state school officer}~~, upon approval of the Kentucky Board of Education, shall adopt administrative regulations for enforcing this provision. These administrative regulations shall include procedures for a superintendent to request an exemption from the Kentucky Board of Education when unusual circumstances warrant an increased class size for an individual class. A request for an exemption shall include specific reasons for the increased class size with a plan for reducing the class size prior to the beginning of the next school year. A district shall not receive in any one (1) year exemptions for more classes than enroll twenty percent (20%) of the pupils in the primary grades and grades four (4) through eight (8).
- (d) In all schools the *commissioner of education*~~{chief state school officer}~~ shall enforce the special education maximum class sizes set by administrative regulations adopted by the Kentucky Board of Education. A superintendent may request an exemption pursuant to paragraph (c) of this subsection. A local school council may request a waiver pursuant to KRS 156.160(2). An exemption or waiver shall not be granted if the increased class size will impede any exceptional child from achieving his individual education program in the least restrictive environment.
- (5) In grades four (4) through six (6) with combined grades, the maximum class size shall be the average daily attendance upon which funding is appropriated for the lowest assigned grade in the class. There shall be no exceptions to the maximum class size for combined classes. In combined classes other than the primary grades, no ungraded students shall be placed in a combined class with graded students. In addition, there shall be no more than two (2) consecutive grade levels combined in any one (1) class in grades four (4) through six (6). However, this shall not apply to schools which have implemented school-based decision making.
- (6) If a local school district, through its admission and release committee, determines that an appropriate program in the least restrictive environment for a particular child with a disability includes either part-time or full-time enrollment with a private school or agency within the state or a public or private agency in another state, the school district shall count as average daily attendance in a public school the time that the child is in attendance at the school or agency, contingent upon approval by the *commissioner of education*~~{chief state school officer}~~.
- (7) Pupils attending a center for child learning and study established under an agreement pursuant to KRS 65.210 to 65.300 shall, for the purpose of calculating average daily attendance, be considered as in attendance in the school district in which the child legally resides and which is party to the agreement. For purposes of subsection (1) of this section, teachers who are actually employees of the joint or cooperative action shall be considered as employees of each school district which is a party to the agreement.
- (8) Program funding shall be increased when the average daily attendance in any district for the first two (2) months of the current school year is greater than the average daily attendance of the district for the first two (2) months of the previous school year. The program funds allotted the district shall be increased by the percent of

increase. The average daily attendance in kindergarten is the kindergarten full-time equivalent pupils in average daily attendance.

- (9) If the average daily attendance for the current school year in any district decreases by ten percent (10%) or more than the average daily attendance for the previous school year, the average daily attendance for purposes of calculating program funding for the next school year shall be increased by an amount equal to two-thirds (2/3) of the decrease in average daily attendance. If the average daily attendance remains the same or decreases in the succeeding school year, the average daily attendance for purposes of calculating program funding for the following school year shall be increased by an amount equal to one-third (1/3) of the decrease for the first year of the decline.
- (10) If the percentage of attendance of any school district shall have been reduced more than two percent (2%) during the previous school year, the program funding allotted the district for the current school year shall be increased by the difference in the percentage of attendance for the two (2) years immediately prior to the current school year less two percent (2%).
- (11) (a) Instructional salaries for vocational agriculture classes shall be for twelve (12) months per year. Vocational agriculture teachers shall be responsible for the following program of instruction during the time period beyond the regular school term established by the local board of education: supervision and instruction of students in agriculture experience programs; group and individual instruction of farmers and agribusinessmen; supervision of student members of agricultural organizations who are involved in leadership training or other activity required by state or federal law; or any program of vocational agriculture established by the Division of Career and Technical Education in the Department of Education. During extended employment, no vocational agriculture teacher shall receive salary on a day that the teacher is scheduled to attend an institution of higher education class which could be credited toward meeting any certification requirement.
- (b) Each teacher of agriculture employed shall submit an annual plan for summer program to the local school superintendent for approval. The summer plan shall include a list of tasks to be performed, purposes for each task, and time to be spent on each task. Approval by the local school superintendent shall be in compliance with the guidelines developed by the ~~the State~~ Department of Education. The supervision and accountability of teachers of vocational agriculture's summer programs shall be the responsibility of the local school superintendent. The local school superintendent shall submit to the **commissioner of education** ~~chief state school officer~~ a completed report of summer tasks for each vocational agriculture teacher. Twenty percent (20%) of the approved vocational agriculture programs shall be audited annually by the State Department of Education to determine that the summer plan has been properly executed.
- (12) (a) In allotting program funds for home and hospital instruction, statewide guaranteed base funding, excluding the capital outlay, shall be allotted for each child in average daily attendance in the prior school year who has been properly identified according to Kentucky Board of Education administrative regulations. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported monthly on forms provided by the Department of Education; and
- (b) Pursuant to administrative regulations of the Kentucky Board of Education, local school districts shall be reimbursed for home and hospital instruction for pupils unable to attend regular school sessions because of short term health impairments. A reimbursement formula shall be established by administrative regulations to include such factors as a reasonable per hour, per child allotment for teacher instructional time, with a maximum number of funded hours per week, a reasonable allotment for teaching supplies and equipment, and a reasonable allotment for travel expenses to and from instructional assignments, but the formula shall not include an allotment for capital outlay. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported annually on forms provided by the Department of Education.
- (13) Except for those schools which have implemented school-based decision making and the school council has voted to waive this subsection, kindergarten aides shall be provided for each twenty-four (24) full-time equivalent kindergarten students enrolled.
- (14) Effective July 1, 2001, there shall be no deduction applied against the base funding level for any pupil in average daily attendance who spends a portion of his or her school day in a program at a state-operated career and technical education or vocational facility.

- (15) *During a fiscal year, a school district may request that the Department of Education recalculate its funds allocated under this section if the current year average daily attendance for the twenty (20) day school month as defined in KRS 158.060 (1) that contains the most days within the calendar month of January exceeds the prior year adjusted average daily attendance plus growth by at least one percent (1%). Any adjustments in the allotments approved under this subsection shall be proportional to the remaining days in the school year and subject to available funds under the program to support education excellence in Kentucky.*
- (16) *To calculate the state portion of the program to support education excellence in Kentucky for a school district, the Department of Education shall subtract the local effort required under KRS 157.390(5) from the calculated base funding under the program to support education excellence in Kentucky, as required by this section. The value of the real estate used in this calculation shall be the lesser of the current year assessment or the prior year assessment increased by four percent (4%) plus the value of current year new property. The calculation under this subsection shall be subject to available funds.*

➔Section 2. KRS 157.420 is amended to read as follows:

Public school funds made available to the credit of each district during any year shall be received, held, and expended by the district board, subject to the provisions of law and administrative regulations of the Kentucky Board of Education. The following restrictions shall govern the expenditure of funds from the public school fund:

- (1) The salary paid any rank of teachers shall be at least equivalent to the amount set forth in the biennial budget schedule for each rank and experience for a term of one hundred eighty-five (185) days for full-time service during the regular school year.
- (2) Beginning with the 2004-2006 biennium, the Kentucky Board of Education shall not approve any working budget or salary schedule for local boards of education for any school year unless the one hundred eighty-five (185) day salary schedule for certified staff has been adjusted over the previous year's salary schedule by a percentage increase at least equal to the cost-of-living adjustment that is provided state government workers under the biennial budget. The base funding level in the program for support education excellence in Kentucky as defined in KRS 157.320 shall be increased by the statewide dollar value of the annual required cost-of-living percentage adjustment that shall be estimated on the sum of the previous year's statewide teachers' salaries.
- (3) A district that compensates its teachers or employees for unused sick leave at the time of retirement, pursuant to KRS 161.155, may create an escrow account to maintain the amount of funds necessary to pay teachers or employees who qualify for receipt of the benefit. The fund is limited to not more than fifty percent (50%) of the maximum liability for the current year to be determined according to the number of staff employed by the district on September 15. Interest generated by the account shall be calculated as part of the total amount. The funds shall not be used for any purpose other than compensation for unused sick leave at the time of retirement and shall not be considered as part of the general fund balance in determining available local revenue for purposes of KRS 157.620.
- (4) The per pupil capital outlay allotment for each district from the public school fund and from local sources shall be kept in a separate account and may be used by the district only for capital outlay projects approved by the **commissioner of education**~~chief state school officer~~ in accordance with requirements of law, and based on a survey made in accordance with administrative regulations of the Kentucky Board of Education. These funds shall be used for the following capital outlay purposes:
  - (a) For direct payment of construction costs;
  - (b) For debt service on voted and funding bonds;
  - (c) For payment or lease-rental agreements under which the board eventually will acquire ownership of a school plant;
  - (d) For the retirement of any deficit resulting from overexpenditure for capital construction, if such deficit resulted from an emergency declared by the Kentucky Board of Education under KRS 160.550; and
  - (e) As a reserve fund for the above-named purposes, to be carried forward in ensuing budgets.

- (5) The district may contribute capital outlay funds for energy conservation measures under guaranteed energy savings contracts pursuant to KRS 45A.345, 45A.352, and 45A.353. Use of these funds, provided in KRS 45A.353, 56.774, and 58.600, shall be based on the following:
  - (a) The energy conservation measures shall include facility alteration;
  - (b) The energy conservation measures shall be identified in the district's approved facility plan;
  - (c) The current facility systems are consuming excess maintenance and operating costs;
  - (d) The savings generated by the energy conservation measures are guaranteed;
  - (e) The capital outlay funds contributed to the energy conservation measures shall be defined as capital cost avoidance as provided in KRS 45A.345(2) and shall be subject to the restrictions on usage as specified in KRS 45A.352(9); and
  - (f) The equipment that is replaced shall have exceeded its useful life as determined by a life-cycle cost analysis.
- (6) If any district has a special levy for capital outlay or debt service that is equal to the capital outlay allotment or a proportionate fraction thereof, and spends the proceeds of that levy for the above-named purposes, the **commissioner of education**~~chief state school officer~~ under administrative regulations of the Kentucky Board of Education, may authorize the district to use all or a proportionate fraction of its capital outlay allotment for current expenses. However, a district which uses capital outlay funds for current expenses shall not be eligible to participate in the School Facilities Construction Commission funds.
- (7) If a survey shows that a school district has no capital outlay needs as shown in paragraphs (a), (b), (c), and (d) of subsection (4) of this section, upon approval of the **commissioner of education**~~chief state school officer~~, these funds may be used for school plant maintenance, repair, insurance on buildings, replacement of equipment, purchase of school buses, and the purchase of modern technological equipment, including telecommunications hardware, televisions, computers, and other technological hardware to be utilized for educational purposes only.
- (8) In surveying the schools, the Department of Education shall designate each school facility as a permanent, functional, or transitional center.
  - (a) "Permanent center" means a center which meets the program standards approved by the Kentucky Board of Education, is located so that students are not subjected to an excessive amount of time being transported to the site, and has established an attendance area which will maintain enrollment at capacity but will also avoid overcrowding.
  - (b) "Functional center" means a center which does not meet all the criteria established for a permanent facility, but is adequate to meet accreditation program standards to insure no substantial academic or building deficiency. The facility plan shall include additions and renovations necessary to meet current accreditation standards for which federal, state, and local funds may be used.
  - (c) "Transitional center" means a center which the local board of education has determined shall no longer be designated permanent or functional. The center shall be destined to be closed and shall not be eligible for new construction, additions, or major renovation. However, the board of education shall maintain any operating transitional center to provide a safe and healthy environment for students.
- (9) If a local school board authorized elementary, middle, or secondary education classes in a facility of a historical settlement school on January 1, 1994, the board shall continue to use the facilities provided by the settlement school if the facilities meet health and safety standards for education facilities as required by administrative regulations. The local school board and the governing body of the settlement school shall enter into a cooperative agreement that delineates the role, responsibilities, and financial obligations for each party.

- (10) *Notwithstanding the provisions of subsections (4) and (6) of this section, a local district that has requested a mid-year adjustment in the support education excellence in Kentucky funding under subsection (15) of Section 1 of this Act may request permission from the commissioner of education to use capital outlay funds for the purchase of school buses or to use the capital outlay funds for increased operational expenses for the first three (3) years following the increased growth in the district without forfeiture of the district's participation in the School Facilities Construction Commission Program. The commissioner may grant or deny the district's request.*

**Signed by the Governor March 24, 2009.**

## CHAPTER 75

### (HB 411)

AN ACT relating to the Kentucky State Police.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. KRS CHAPTER 16A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS;

*As used in Sections 1 to 10 of this Act, unless the context requires otherwise:*

- (1) *"Cabinet" means the Justice and Public Safety Cabinet;*
- (2) *"Secretary" means the secretary of the Cabinet;*
- (3) *"Commissioner" means the commissioner of the Department of Kentucky State Police;*
- (4) *"Officer" means any individual appointed to one (1) of the positions established by Section 2 of this Act who has the powers of a peace officer;*
- (5) *"Department" means the Department of Kentucky State Police; and*
- (6) *"Continuous service" for participation in and eligibility for the promotional process for each rank of commercial vehicle enforcement officer means:*
  - (a) *For sergeant, service as a commissioned officer that has not been interrupted by actual separation from the department, whether in the form of resignation, retirement, or termination;*
  - (b) *For lieutenant, service in grade as a sergeant that has not been interrupted by actual separation from the department, whether in the form of resignation, retirement, termination, or by demotion in accordance with Section 7 of this Act;*
  - (c) *For captain, service in grade as lieutenant that has not been interrupted by actual separation from the department, whether in the form of resignation, retirement, termination, or by demotion in accordance with Section 7 of this Act.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 16A IS CREATED TO READ AS FOLLOWS:

- (1) *The following positions shall be created within the Department of Kentucky State Police:*
  - (a) *Commercial vehicle enforcement officers;*
  - (b) *Arson investigator officers;*
  - (c) *Hazardous devices investigator officers; and*
  - (d) *Facilities security officers.*
- (2) *These positions shall be appointed pursuant to Section 3 of this Act and shall be utilized by the commissioner to enforce the laws of the Commonwealth and to comply with federal and state mandates.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 16A IS CREATED TO READ AS FOLLOWS:

- (1) *The following officers shall be appointed by the commissioner:*
  - (a) *Commercial vehicle enforcement officers;*

- (b) *Arson investigator officers; and*
  - (c) *Hazardous devices investigator officers.*
- (2) *Facilities security officers shall be appointed by the secretary as a special law enforcement officer under KRS 61.902.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 16A IS CREATED TO READ AS FOLLOWS:

*The powers and duties of officers in the positions established by Section 2 of this Act shall be as follows:*

- (1) *Commercial vehicle enforcement officers shall enforce:*
- (a) *Commercial vehicle licensure, operator, traffic, and criminal violations;*
  - (b) *Motor vehicle operator, traffic, and criminal law violations on a highway; and*
  - (c) *All the laws and administrative regulations of the Commonwealth at the direction of the commissioner.*
- (2) *Arson investigator officers shall enforce:*
- (a) *All criminal laws pertaining to arson; and*
  - (b) *All the laws and administrative regulations of the Commonwealth at the direction of the commissioner.*
- (3) *Hazardous devices investigator officers shall enforce:*
- (a) *All criminal laws pertaining to hazardous devices; and*
  - (b) *All the laws and administrative regulations of the Commonwealth at the direction of the commissioner.*
- (4) *Facilities security officers shall have the jurisdiction and duties established pursuant to KRS 61.900 to 61.930.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 16A IS CREATED TO READ AS FOLLOWS:

- (1) *At the time of appointment by the department or the secretary, officers shall meet the minimum requirements established by this subsection.*
- (a) *Commercial vehicle enforcement officers shall:*
    1. *Meet at least one (1) of the following education or experience requirements:*
      - a. *Have completed at least fifty-four (54) semester hours with a college or university;*
      - b. *Possess at least two (2) years experience as a commercial vehicle inspector under the North American Standard Requirements;*
      - c. *Possess at least two (2) years experience as a full-time sworn law-enforcement officer; or*
      - d. *Possess at least two (2) years experience in military duty;*
    2. *Be of good moral character and capable of successfully meeting the physical fitness standards established by the commissioner; and*
    3. *Meet the minimum qualifications for becoming a certified peace officer as provided by KRS 15.382.*
  - (b) *Arson investigator officers shall:*
    1. *Possess at least one (1) year of law enforcement, police, criminal, fire, or arson investigation experience; and*
    2. *Meet the minimum qualifications for becoming a certified peace officer as provided by KRS 15.382.*
  - (c) *Hazardous devices investigator officers shall:*

1. *Possess at least five (5) years of experience involving explosives or hazardous devices used in the areas of law enforcement, the military, or fire fighting; and*
  2. *Meet the minimum qualifications for becoming a certified peace officer as provided by KRS 15.382.*
- (d) *Facilities security officers shall be commissioned as special law enforcement officers under KRS 61.900 to 61.930.*
- (2) *Upon completion of a probationary period of one (1) year:*
- (a) *Commercial vehicle enforcement officers, arson investigator officers, and hazardous devices investigator officers shall have successfully completed the Peace Officer Professional Standards (POPS) certification process through the Kentucky State Police Academy or through the Department of Criminal Justice Training; and*
  - (b) *Commercial vehicle enforcement officers shall successfully complete and pass a certified course in General Hazardous Materials and North American Standard Driver/Vehicle Inspection.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 16A IS CREATED TO READ AS FOLLOWS:

- (1) *Commercial vehicle enforcement officers shall be promoted according to the terms and conditions established by this subsection.*
- (a) *Promotions to commercial vehicle enforcement sergeant within the department shall be on the following terms and conditions:*
1. *In order to be eligible for the promotion, the applicant shall have served as a commissioned commercial vehicle enforcement officer for at least six (6) years;*
  2. *Promotions made by the department for this position shall be based upon the applicant's cumulative score computed from twenty-five percent (25%) on personnel performance evaluation, thirty percent (30%) on job simulation examination, and forty-five percent (45%) on a written examination;*
  3. *A promotional list shall be established and shall remain valid for one (1) year. The promotional list shall consist of the numerical scores and rankings of each applicant as provided by subparagraph 2. of this paragraph. Promotions shall be made in consecutive order beginning with the highest numerical ranking to fill an interim vacancy. If two (2) or more applicants receive the same numerical score, the order of placement on the list shall be determined by seniority of service. Upon the determination of a new numerical ranking following a new examination, all previous rankings shall be null and void;*
  4. *The written examination for the applicant's cumulative score shall be prepared and administered by an individual designated by the commissioner. Materials and textbooks for the examination shall be selected by the commissioner and his or her staff. At least three (3) months prior to the examination date, the commissioner shall inform all applicants of the exact material and textbooks from which test questions will be taken. The written examination shall be administered to all applicants at the same time and the applicant shall receive his or her numerical score immediately upon completion of the written examination. An applicant's numerical score shall remain valid for a period of two (2) years following the date of the examination unless the source material used as the basis for the test changes by more than thirty percent (30%);*
  5. *The job simulation examination shall be evaluated by boards designated by the commissioner that shall consist of:*
    - a. *The commissioner or his or her designee. The designee shall have a rank no lower than commercial vehicle enforcement captain;*
    - b. *An officer from another police agency of the rank equal to the position for which the applicant is competing;*
    - c. *An instructor from an accredited law enforcement education program;*
    - d. *A personnel director from private industry; and*



1. *The applicant shall have served as either a facilities security officer for at least two (2) years or possess at least two (2) years of other law enforcement or security services experience;*
  2. *The applicant shall complete and pass a written examination established by the department;*
  3. *When there are multiple applicants for a position, promotions shall be based upon a cumulative score computed from sixty percent (60%) on personnel performance evaluation and forty percent (40%) on a written examination. If an applicant is not employed by the department, job evaluations from past employers shall substitute for the personnel performance evaluation on a scale established by the department's human resources branch; and*
  4. *Personnel performance evaluations shall be made by the appropriate supervisory personnel under procedures established and approved by the commissioner.*
- (b) *Promotions or appointments to facilities security lieutenant within the department shall be on the following terms and conditions:*
1. *The applicant shall have served as either a facilities security officer for at least three (3) years or possess at least three (3) years of other law enforcement or security services experience;*
  2. *The applicant shall have at least two (2) years previous supervisory experience in a law enforcement or security services position;*
  3. *The applicant shall complete and pass a written examination established by the department;*
  4. *When there are multiple applicants for a position, promotions shall be based upon a cumulative score computed from sixty percent (60%) on personnel performance evaluation and forty percent (40%) on a written examination. If an applicant is not employed by the department, job evaluations from past employers shall substitute for the personnel performance evaluation on a scale established by the department's human resources branch; and*
  5. *Personnel performance evaluations shall be made by the appropriate supervisory personnel under procedures established and approved by the commissioner.*
- (4) *There shall be no discrimination based on race, sex, age, national origin, color, religion, creed, or political affiliation with respect to the department promotional system. All personnel actions are to be based solely on merit.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 16A IS CREATED TO READ AS FOLLOWS:

- (1) *With the exceptions specified in this section and Section 8 of this Act, no officer commissioned under this chapter shall be removed, suspended, or reduced in grade or pay for any reason except inefficiency, misconduct, insubordination, or violation of law or of any administrative regulation promulgated by the commissioner. Any person may present charges in writing against any officer, which shall be filed with the Office of Internal Affairs, which shall be designated by the commissioner as the recipient of charges and shall be administratively responsible for the maintenance of good order within the department through the collection and investigation of charges and the retention of their dispositions. The charges shall be signed by the person filing the charges, and shall set out with clarity and distinction each and every charge. The commissioner, whenever probable cause appears, shall present charges against any officer whom he believes to have been guilty of conduct justifying his removal or punishment, in the interest of public order. Within five (5) days after the filing of charges, the Office of Internal Affairs shall deliver a copy thereof, personally, by certified mail, return receipt requested, to the officer offending. Within five (5) days after the receipt thereof, the officer may demand a public hearing, or may admit the truth of the charges in whole or in part. If the officer admits the truthfulness of the charges, the commissioner shall remove, suspend, reduce in rank or pay the officer so offending, in proportion to the seriousness of the charges.*
- (2) *If the charges are denied and the officer demands a hearing within the time specified by subsection (1) of this section, he shall make his demand known to the commissioner in writing. After a demand for hearing has been made by the officer, the commissioner within twenty (20) days from the date thereof shall arrange for a public hearing before a trial board to be constituted in the manner provided in this section. The officer defendant shall be given not less than twenty (20) days notice of the time, place, and hour of the hearing.*

- (3) *Upon the hearing, all charges shall be considered traversed and put in issue, and the trial shall be confined and limited to the issues presented by the written charges. The trial board hearing the charges may summon and compel the attendance of witnesses at all hearings or sittings, by subpoena issued by the commissioner and served upon any witness by any sheriff or other person authorized by law to serve process. If any person fails to comply with any lawful order of the department or with process, or if any witness refuses to testify concerning any matter in which he may lawfully be interrogated, any Circuit Judge, upon application of the trial board or the commissioner, may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the Circuit Court or a refusal to testify in that court.*
- (4) *The officer defendant shall have the right to subpoena in his behalf any witnesses he may desire upon furnishing their names to the trial board or to the commissioner. The officer shall likewise have the right to appear in person and by counsel.*
- (5) *All charges against the officer defendant, together with all proceedings before the trial board, shall be transcribed and reduced to writing and a permanent record kept thereof.*
- (6) *In any instance where the commissioner has probable cause to believe that an officer has been guilty of conduct justifying his removal or punishment, he may immediately suspend the officer from duty, or from both pay and duty, pending trial, and the officer shall not be again placed on duty or allowed pay thereafter until a determination of the charges under this section.*
- (7) *The trial board, after hearing the charges, shall fix the punishment of any officer found guilty of any one (1) or more charges, by reprimand or suspension for any length of time not to exceed six (6) months, or by reducing the grade if the officer's classification warrants same, or by combining any two (2) or more of the punishments, or by reducing the monthly salary of the officer by not more than twenty percent (20%) for not more than six (6) months, or by removing or dismissing from the service of the department any officer so found guilty.*
- (8) *For the purpose of hearing charges against any officer, as set forth in this section, there is created a trial board, which shall consist of the commissioner and a panel of ten (10) officers of the department appointed by the commissioner which shall be composed of six (6) commercial vehicle enforcement officers, two (2) facilities security officers, one (1) arson investigator officer, and one (1) hazardous devices investigator officer. The commissioner shall designate from the panel seven (7) members consisting of four (4) commercial vehicle enforcement officers, one (1) facilities security officer, one (1) arson investigator officer, and one (1) hazardous devices investigator officer, to hear charges against any officer in the manner and under the procedures established by this section. The commissioner may promulgate reasonable administrative regulations governing the procedure before the trial board that do not conflict with this section. The panel or trial board shall be a continuing body and the officers designated shall serve on the board or panel in addition to their other duties without any increase in compensation, except they may be reimbursed for meals, lodging, and traveling expenses incurred while in the performance of their official duties as members of the board or panel. Any officer defendant may for cause challenge the right of any member of the board in the trial of any action against him, and if the remaining members of the board find that the challenge is justifiable, the member of the board shall be excused from hearing the charges, and another member substituted from the panel.*
- (9) *No officer is entitled to a hearing as provided in this section unless his suspension is for more than twenty (20) days, or his pay reduced more than ten percent (10%), except that if the officer receives more than twenty (20) days suspension or reduction in salary of more than ten percent (10%) within a period of one (1) year, he shall have the right to a hearing as provided by this section.*
- (10) *Any officer appointed to the department under this section shall be considered on probation for a period of one (1) year from and after the date of his appointment, and during that period may be discharged or suspended or reduced in rank or pay, with or without cause, by the commissioner. The rights conferred upon an officer for a hearing, as provided in this section, shall not accrue until the officer has been employed by the department for a period of one (1) year or more.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 16A IS CREATED TO READ AS FOLLOWS:

- (1) *Any officer of the department found guilty by the trial board of any charge as provided in Section 7 of this Act shall have the right, within ten (10) days from the date of judgment of the trial board, to appeal to the Franklin Circuit Court, if the punishment is:*
  - (a) *A suspension of more than twenty (20) days;*

- (b) *A pay reduction of more than ten percent (10%);*
- (c) *A grade reduction if his classification so warrants; or*
- (d) *Dismissal from the department.*

*The enforcement of the judgment of the trial board upon said charges shall not be suspended during the appeal.*

- (2) *To perfect the appeal within the specified time, an officer shall file a copy of the order, all the evidence heard, and a full transcribed record relative to the charges with the Franklin County Circuit Clerk. The officer shall first post a bond to secure the cost of the action in a lump sum amount to be approved by the circuit clerk, with corporate surety approved by the Office of Insurance as to solvency and responsibility and authority to transact business in this state, or the officer may post a cash bond. The members of the trial board and the commissioner shall be necessary parties to the appeal. The circuit clerk shall docket the case as though it were a petition in equity and shall immediately issue a summons for the appellee. The summons shall be returnable in the same manner as in equity cases. Service of summons upon the commissioner or acting commissioner shall be deemed service upon the board.*
- (3) *The appeal shall be scheduled for trial as soon as possible, and the hearing thereof shall be expedited in the same manner as a declaratory judgment suit.*
- (4) *No new or additional evidence shall be introduced in the Franklin Circuit Court, except as to fraud or misconduct of some party involved in the investigation of the charges or a member of the trial board. The court shall sit in appellate jurisdiction and shall not overturn the verdict of the trial board unless it finds:
 
  - (a) *The board acted without or in excess of its powers;*
  - (b) *The order appealed from was procured by fraud; or*
  - (c) *If questions of fact are at issue, whether any substantial evidence exists to support the order issued by the trial board. The court shall enter a judgment sustaining or setting aside the order of the trial board. The cost of the action shall follow the judgment of the court.**
- (5) *Any party aggrieved by a judgment of the Franklin Circuit Court may appeal to the Court of Appeals in the manner provided in the Rules of Civil Procedure. The appeal shall be docketed within sixty (60) days from the entry of judgment, unless the time is extended by the Franklin Circuit Court, but in no event beyond one hundred twenty (120) days from the entry of judgment.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 16A IS CREATED TO READ AS FOLLOWS:

*Notwithstanding any other provision to the contrary, officers governed by Sections 1 to 10 of this Act shall participate in the following retirement systems:*

- (1) *Commercial vehicle enforcement officers, arson investigator officers, and hazardous devices investigator officers shall participate in the Kentucky Employees Retirement System under hazardous duty coverage; and*
- (2) *Facilities security officers shall participate in the Kentucky Employees Retirement System under nonhazardous coverage.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 16A IS CREATED TO READ AS FOLLOWS:

*For officers governed by Sections 1 to 10 of this Act, the following subjects shall be administered in the same manner as provided for state police officers governed by 16.010 to 16.185:*

- (1) *Prohibition against requesting or requiring victim of alleged sexual offense to submit to polygraph or other examination, as provided by KRS 16.062;*
- (2) *Organization of the department as provided by KRS 16.040(1);*
- (3) *Additional duties of the department, as provided by KRS 16.065;*
- (4) *Uniforms, equipment, and facilities, as provided by KRS 16.070;*
- (5) *Automobile liability insurance, as provided by KRS 16.075;*

- (6) *Bonds of employees, as provided by KRS 16.080;*
- (7) *Training school, as provided by KRS 16.090;*
- (8) *Officers required to take educational course on AIDS, as provided by KRS 16.095;*
- (9) *Travel expenses and per diem allowances, as provided by KRS 16.100;*
- (10) *Fees or rewards, as provided by KRS 16.110;*
- (11) *Disabled officer on hazardous duty may elect to be retained on payroll, as provided by KRS 16.165.*
- (12) *Election of benefits by disabled officer, as provided by KRS 16.167.*
- (13) *Political activity forbidden, as provided by KRS 16.170; and*
- (14) *Indemnification of State Police officer sued for act or omission in line of duty who suffers financial loss, as provided by KRS 16.185.*

➔Section 11. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

- 1. The Governor.
- 2. Lieutenant Governor.
- 3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
- 4. Department of Law.
  - (a) Attorney General.
- 5. Department of the Treasury.
  - (a) Treasurer.
- 6. Department of Agriculture.
  - (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
- 7. Auditor of Public Accounts.

II. Program cabinets headed by appointed officers:

- 1. Justice and Public Safety Cabinet:
  - (a) Department of Kentucky State Police.
  - (b) Department of Criminal Justice Training.
  - (c) Department of Corrections.
  - (d) Department of Juvenile Justice.
  - (e) Office of the Secretary.

- (f) Office of Drug Control Policy.
  - (g) Office of Legal Services.
  - (h) Office of the Kentucky State Medical Examiner.
  - (i) Parole Board.
  - (j) Kentucky State Corrections Commission.
  - (k) Office of Legislative and Intergovernmental Services.
  - (l) Office of Management and Administrative Services.
  - (m) Office of Public Safety Training.
  - (n) Office of Investigations.
  - (o) ~~Department of Kentucky Vehicle Enforcement.~~
  - (p) Department for Public Advocacy.
2. Education Cabinet:
- (a) Office of the Secretary.
  - (b) Office of Legal Services.
    - 1. Client Assistance Program.
  - (c) Office of Communication.
  - (d) Office of Legislative and Intergovernmental Affairs.
  - (e) Office of Budget and Administration.
    - 1. Division of Human Resources.
    - 2. Division of Administrative Services.
    - 3. Division of Technology Services.
  - (f) Board of Directors for the Center for School Safety.
  - (g) Council on Postsecondary Education.
    - 1. Foundation for Adult Education.
  - (h) Department of Education.
    - 1. Kentucky Board of Education.
  - (i) Department for Libraries and Archives.
  - (j) Department of Workforce Investment.
    - 1. Office for the Blind.
    - 2. Office of Vocational Rehabilitation.
    - 3. Office of Career and Technical Education.
    - 4. Office of Employment and Training.
  - (k) Foundation for Workforce Development.
  - (l) Kentucky Office for the Blind State Rehabilitation Council.
  - (m) Kentucky Technical Education Personnel Board.
  - (n) Kentucky Workforce Investment Board.
  - (o) Statewide Council for Vocational Rehabilitation.
  - (p) Statewide Independent Living Council.

- (q) Unemployment Insurance Commission.
  - (r) Education Professional Standards Board.
    - 1. Division of Educator Preparation.
    - 2. Division of Certification.
    - 3. Division of Professional Learning and Assessment.
    - 4. Division of Legal Services.
  - (s) Kentucky Commission on the Deaf and Hard of Hearing.
  - (t) Kentucky Educational Television.
  - (u) Kentucky Environmental Education Council.
3. Environmental and Public Protection Cabinet:
- (a) Office of the Secretary.
    - 1. Office of Legislative and Intergovernmental Affairs.
    - 2. Office of Communications and Public Outreach.
    - 3. Office of Regulatory Affairs.
    - 4. Office of Legal Services.
    - 5. Office of Administrative and Information Services.
    - 6. Office of Administrative Hearings.
    - 7. Office of Inspector General.
    - 8. Mine Safety Review Commission.
    - 9. Workers' Compensation Board.
    - 10. Kentucky State Nature Preserves Commission.
    - 11. Kentucky Environmental Quality Commission.
    - 12. Kentucky Occupational Safety and Health Review Commission.
  - (b) Department for Environmental Protection.
    - 1. Office of the Commissioner.
    - 2. Division of Air Quality.
    - 3. Division of Water.
    - 4. Division of Environmental Services.
    - 5. Division of Waste Management.
    - 6. Division of Enforcement.
    - 7. Division of Compliance Assistance.
  - (c) Department for Natural Resources.
    - 1. Office of the Commissioner.
    - 2. Office of Technical and Administrative Support.
    - 3. Division of Mine Permits.
    - 4. Division of Mine Reclamation and Enforcement.
    - 5. Division of Abandoned Mine Lands.
    - 6. Division of Oil and Gas Conservation.

7. Office of Mine Safety and Licensing.
8. Division of Forestry.
9. Division of Conservation.
- (d) Department of Public Protection.
  1. Office of the Commissioner.
  2. Division of Administrative Services.
  3. Crime Victims Compensation Board.
  4. Board of Claims.
  5. Board of Tax Appeals.
  6. Kentucky Boxing and Wrestling Authority.
  7. Kentucky Horse Racing Authority.
  8. Kentucky Public Service Commission.
  9. Office of Alcoholic Beverage Control.
  10. Office of Charitable Gaming.
  11. Office of Financial Institutions.
  12. Office of Housing, Buildings and Construction.
  13. Office of Insurance.
- (e) Department of Labor.
  1. Office of the Commissioner.
  2. Office of Occupational Safety and Health.
  3. Office of Labor Management Relations and Mediation.
  4. Office of Workplace Standards.
  5. Office of Workers' Claims.
  6. Workers' Compensation Funding Commission.
  7. Kentucky Labor Management Advisory Council.
  8. Occupational Safety and Health Standards Board.
  9. Prevailing Wage Review Board.
  10. Kentucky Employees Insurance Association.
  11. Apprenticeship and Training Council.
  12. State Labor Relations Board.
  13. Workers' Compensation Advisory Council.
  14. Workers' Compensation Nominating Commission.
  15. Employers' Mutual Insurance Authority.
  16. Division of Administrative Services.
4. Transportation Cabinet:
  - (a) Department of Highways.
    1. Office of Program Planning and Management.
    2. Office of Project Development.

3. Office of Construction and Operations.
4. Office of Intermodal Programs.
5. Highway District Offices One through Twelve.
- (b) Department of Vehicle Regulation.
- (c) Department of Administrative Services.
- (d) Department of Aviation.
- (e) Department of Intergovernmental Programs.
  1. Office of Transportation Enhancement Programs.
  2. Office of Rural and Secondary Roads.
- (f) Office of the Secretary.
  1. Office of Legislative and Intergovernmental Affairs.
  2. Office of Public Affairs.
  3. Office of Transportation Delivery.
  4. Office for Business and Occupational Development.
  5. Office of Budget and Fiscal Management.
  6. Office of Legal Services.
  7. Office of Inspector General.
  8. Office of the Transportation Operations Center.
  9. Office of Personnel Management.
5. Cabinet for Economic Development:
  - (a) Office of Administration and Support.
  - (b) Department for New Business Development.
  - (c) Department of Financial Incentives.
  - (d) Department for Existing Business Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
  - (g) Office of Research and Information Technology.
  - (h) Department of Commercialization and Innovation.
  - (i) Office of Legal Services.
  - (j) Commission on Small Business Advocacy.
6. Cabinet for Health and Family Services:
  - (a) Department for Public Health.
  - (b) Department for Medicaid Services.
  - (c) Department for Mental Health and Mental Retardation Services.
  - (d) Kentucky Commission for Children with Special Health Care Needs.
  - (e) Office of Health Policy.
  - (f) Office of the Secretary.
  - (g) Office of Legal Services.

- (h) Office of Inspector General.
  - (i) Office of Legislative and Public Affairs.
  - (j) Department for Community Based Services.
  - (k) Department for Disability Determination Services.
  - (l) Office of the Ombudsman.
  - (m) Department for Human Support Services.
  - (n) Kentucky Commission on Community Volunteerism and Service.
  - (o) Office of Fiscal Services.
  - (p) Office of Human Resource Management.
  - (q) Office of Technology.
  - (r) Office of Contract Oversight.
  - (s) Governor's Office of Wellness and Physical Activity.
  - (t) Department for Aging and Independent Living.
7. Finance and Administration Cabinet:
- (a) Office of General Counsel.
  - (b) Office of the Controller.
  - (c) Office of Administrative Services.
  - (d) Office of Public Information.
  - (e) Department for Facilities and Support Services.
  - (f) Department of Revenue.
  - (g) Commonwealth Office of Technology.
  - (h) State Property and Buildings Commission.
  - (i) Kentucky Savings Bond Authority.
  - (j) Office of Equal Employment Opportunity and Contract Compliance.
  - (k) Kentucky Employees Retirement Systems.
  - (l) Commonwealth Credit Union.
  - (m) State Investment Commission.
  - (n) Kentucky Housing Corporation.
  - (o) Kentucky Local Correctional Facilities Construction Authority.
  - (p) Kentucky Turnpike Authority.
  - (q) Historic Properties Advisory Commission.
  - (r) Kentucky Tobacco Settlement Trust Corporation.
  - (s) State Board for Proprietary Education.
  - (t) Kentucky Higher Education Assistance Authority.
  - (u) Kentucky River Authority.
  - (v) Kentucky Teachers' Retirement System Board of Trustees.
8. Commerce Cabinet:
- (a) Department of Tourism.

- (1) Division of Tourism Services.
  - (2) Division of Marketing and Advertising.
  - (3) Division of Parks Marketing.
- (b) Kentucky Department of Parks.
- (1) Division of Information Technology.
  - (2) Division of Personnel and Payroll.
  - (3) Division of Financial Operations.
  - (4) Division of Facilities Management.
  - (5) Division of Facilities Maintenance.
  - (6) Division of Customer Services.
  - (7) Division of Recreation.
  - (8) Division of Golf Courses.
  - (9) Division of Food Services.
  - (10) Division of Rangers.
  - (11) Division of Eastern Parks.
  - (12) Division of Southern Parks.
  - (13) Division of Western Parks.
- (c) Department of Fish and Wildlife Resources.
- (1) Division of Law Enforcement.
  - (2) Division of Administrative Services.
  - (3) Division of Engineering.
  - (4) Division of Fisheries.
  - (5) Division of Information and Education.
  - (6) Division of Wildlife.
  - (7) Division of Public Affairs.
- (d) Kentucky Horse Park.
- (1) Division of Support Services.
  - (2) Division of Buildings and Grounds.
  - (3) Division of Operational Services.
- (e) Kentucky State Fair Board.
- (1) Division of Expositions and Admission.
  - (2) Division of Kentucky Fair and Exposition Center Operations.
  - (3) Division of Commonwealth Convention Center.
  - (4) Division of Public Relations and Media.
  - (5) Division of Administrative Services.
  - (6) Division of Personnel Management and Staff Development.
  - (7) Division of Sales.
  - (8) Division of Security and Traffic Control.

- (f) Office of the Secretary.
  - (g) Office of Finance and Administration.
  - (h) Office of Legal Affairs.
  - (i) Office of Intergovernmental Affairs.
  - (j) Office of Human Resources.
  - (k) Office of Public Affairs and Constituent Services.
  - (l) Office of Information Technology.
  - (m) Office of the Kentucky Sports Authority.
    - (1) Kentucky Sports Authority Board.
  - (n) Office of Creative Services.
  - (o) Office of Capital Plaza Operations.
  - (p) Office of Arts and Cultural Heritage.
  - (q) Kentucky African-American Heritage Commission.
  - (r) Kentucky Foundation for the Arts.
  - (s) Kentucky Humanities Council.
  - (t) Kentucky Heritage Council.
  - (u) Kentucky Arts Council.
  - (v) Kentucky Historical Society.
    - (1) Division of Museums.
    - (2) Division of Oral History and Educational Outreach.
    - (3) Division of Research and Publications.
    - (4) Division of Administration.
  - (w) Kentucky Center for the Arts.
    - (1) Division of Governor's School for the Arts.
  - (x) Kentucky Artisans Center at Berea.
  - (y) Martin Luther King Commission.
  - (z) Northern Kentucky Convention Center.
  - (aa) Eastern Kentucky Exposition Center.
9. Personnel Cabinet:
- (a) Office of the Secretary.
  - (b) Department for Personnel Administration.
  - (c) Office for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Office of Administrative Services.
  - (f) Office of Legal Services.
  - (g) Office of Government Training.
  - (h) Department for Employee Insurance.

III. Other departments headed by appointed officers:

1. Department of Military Affairs.
2. Governor's Office for Local Development.
3. Kentucky Commission on Human Rights.
4. Kentucky Commission on Women.
5. Department of Veterans' Affairs.
6. Kentucky Commission on Military Affairs.
7. Office of Minority Empowerment.
8. Governor's Council on Wellness and Physical Activity.

➔Section 12. KRS 15A.020 is amended to read as follows:

(1) The Justice and Public Safety Cabinet shall have the following departments:

- (a) Department of Corrections;
- (b) Department of Criminal Justice Training, which shall have the following divisions:

1. Training Operations Division;
2. Administrative Division; and
3. Training Support Division;

(c) Department of Juvenile Justice, which shall have the following divisions:

1. Division of Medical Services;
2. Division of Western Region;
3. Division of Central Region;
4. Division of Eastern Region;
5. Division of Southeastern Region;
6. Division of Northern Region;
7. Division of Administrative Services;
8. Division of Program Services;
9. Division of Placement Services;
10. Professional Development Division;
11. Mental Health Services Division; and
12. Community Services Division;

~~(d) Department of Kentucky Vehicle Enforcement, headed by a commissioner appointed pursuant to KRS 12.040, which shall perform functions required by KRS Chapter 281 and other state and federal laws and administrative regulations relating to commercial vehicles and vehicles for hire and which shall perform such other functions as may be assigned by the secretary. The Department of Kentucky Vehicle Enforcement shall have the following divisions:~~

- ~~1. Division of Field Operations East;~~
- ~~2. Division of Field Operations West;~~
- ~~3. Division of Special Operations; and~~
- ~~4. Division of Administrative Services;~~

~~(e)~~ Department of Kentucky State Police, which shall have the following divisions:

1. Administrative Division;
2. Operations Division;~~and~~

3. Technical Services Division; *and*
  4. ***Commercial Vehicle Enforcement Division; and***
- (e) ~~(f)~~ Department for Public Advocacy, which shall have the following divisions:
1. Protection and Advocacy Division;
  2. Division of Law Operations;
  3. Division of Trial Services; and
  4. Division of Post-Trial Services.
- (2) Each department, except for the Department for Public Advocacy, shall be headed by a commissioner who shall be appointed by the secretary of justice and public safety with the approval of the Governor as required by KRS 12.040. Each commissioner shall be directly responsible to the secretary and shall have such functions, powers, and duties as provided by law and as the secretary may prescribe. The Department for Public Advocacy shall be headed by the public advocate, appointed as required by KRS 31.020, who shall be directly responsible to the Public Advocacy Commission. The Department for Public Advocacy is an independent state agency which shall be attached to the Justice and Public Safety Cabinet for administrative purposes only. The Justice and Public Safety Cabinet shall not have control over the Department for Public Advocacy's information technology equipment and use unless granted access by court order.
- (3) The Justice and Public Safety Cabinet shall have the following offices:
- (a) Office of the Secretary, which shall be headed by a deputy secretary appointed pursuant to KRS 12.050 and responsible for the direct administrative support for the secretary and other duties as assigned by the secretary, and which, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;
  - (b) Office of Management and Administrative Services, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible to and report to the secretary and be responsible for all matters relating to human resources, state and federal grants management, including but not limited to the administration of KRS 15A.060, fiscal functions, management and daily operations of the information processing activities for the cabinet, and management and daily administrative services for the cabinet; and who, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;
  - (c) Office of Legal Services, which shall be headed by an executive director appointed pursuant to KRS 12.050 and 12.210 to provide legal representation and services for the cabinet. The executive director shall be directly responsible to and report to the secretary and, with the approval of the secretary, may employ such attorneys appointed pursuant to KRS 12.210 and other staff as necessary to perform the duties, functions, and responsibilities of the office;
  - (d) Office of Legislative and Intergovernmental Services, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible for all matters relating to the provision of support to the Criminal Justice Council, legislative liaison services, and functions and duties vested in the Criminal Justice Council as described in KRS 15A.030. The executive director shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;
  - (e) Office of the Kentucky State Medical Examiner, which shall be headed by a chief medical examiner appointed pursuant to KRS 72.240 who shall be responsible for all matters relating to forensic pathology and forensic toxicology and other duties as assigned by the secretary. The executive director appointed pursuant to KRS 12.050 shall be responsible for all matters related to the administrative support of the Office of the State Medical Examiner. The executive director shall report directly to the secretary and with the approval of the secretary may employ such administrative support staff as necessary to perform the administrative duties, functions, and responsibilities of the office. The chief medical examiner shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the forensic duties, functions, and responsibilities of the office;
  - (f) Office of Drug Control Policy, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible for all matters relating to the research, coordination, and

execution of drug control policy and for the management of state and federal grants, including but not limited to the prevention and treatment related to substance abuse. By December 31 of each year, the Office of Drug Control Policy shall review, approve, and coordinate all current projects of any substance abuse program which is conducted by or receives funding through agencies of the executive branch. This oversight shall extend to all substance abuse programs which are principally related to the prevention or treatment, or otherwise targeted at the reduction, of substance abuse in the Commonwealth. The Office of Drug Control Policy shall promulgate administrative regulations consistent with enforcing this oversight authority. The executive director shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;

- (g) Office of Public Safety Training, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible for all matters relating to the construction and operation of joint usage training facilities at the Public Safety Training Center for the cabinet. The Department of Criminal Justice Training shall provide all administrative and logistical support for this office. The executive director shall be responsible to and report to the secretary for all matters relating to the construction and operation of joint usage training facilities at the Public Safety Training Center, and management, scheduling, maintenance, and daily operations of the Public Safety Training Center. The executive director, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office; and
- (h) Office of Investigations, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible for investigating all complaints regarding the facilities, staff, treatment of juveniles, and other matters relating to the operation of the Justice and Public Safety Cabinet. If it appears that there is a violation of statutes, administrative regulations, policies, court decisions, the rights of juveniles who are subject to the orders of the department, or any other matter relating to the Justice and Public Safety Cabinet, the office shall report to the secretary of the Justice and Public Safety Cabinet who shall, if required, refer the matter to a law enforcement agency, Commonwealth's attorney, county attorney, the Attorney General, or federal agencies, as appropriate. The executive director shall be directly responsible to and report to the secretary and, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office. The Office of Investigations may be used to investigate matters in which there is a suspicion of violation of written policy, administrative regulation, or statutory law within the Department for Public Advocacy only when such investigation will have no prejudicial impact upon a person who has an existing attorney-client relationship with the Department for Public Advocacy. Notwithstanding the provisions of this paragraph, investigation and discipline of KRS Chapter 16 personnel shall continue to be conducted by the Department of Kentucky State Police pursuant to KRS Chapter 16. The Office of Investigations shall conduct no other investigations.

➔Section 13. KRS 15A.075 is amended to read as follows:

- (1) The Criminal Justice Council is hereby created within the Justice and Public Safety Cabinet.
- (2) The membership of the council shall consist of:
  - (a) The secretary of the Justice and Public Safety Cabinet, who shall serve as the chair;
  - (b) The Attorney General or his or her designee;
  - (c) The chair of the Judiciary Committee of the House of Representatives or his or her designee;
  - (d) The chair of the Judiciary Committee of the Senate or his or her designee;
  - (e) The executive director of the Administrative Office of the Courts or his or her designee;
  - (f) The president of the Kentucky Association of Criminal Defense Lawyers or his or her designee;
  - (g) The deputy secretary of the Justice and Public Safety Cabinet, who shall serve as the deputy chair;
  - (h) The commissioner of the Department of Kentucky State Police or his or her designee;
  - (i) The commissioner of the Department of Criminal Justice Training or his or her designee;
  - (j) The commissioner of the Department of Corrections or his or her designee;
  - (k) The commissioner of the Department of Juvenile Justice or his or her designee;

- (1) ~~The commissioner of the Department of Kentucky Vehicle Enforcement or his or her designee;~~  
~~(m)~~ A representative of the County Attorneys Association;  
~~(n)~~ ~~(o)~~ The Public Advocate of Kentucky or his or her designee; and  
~~(n)~~ ~~(o)~~ A representative of the Commonwealth's Attorneys Association.
- (3) The council shall undertake such research and other activities as may be authorized or directed by:
- (a) The secretary of the Justice and Public Safety Cabinet; or
  - (b) The General Assembly.
- (4) Each member of the council shall have one (1) vote. Members of the council shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties. The council shall meet on the call of its chair.
- (5) A simple majority of the members of the council shall constitute a quorum for the conduct of business at a meeting.
- (6) The council is authorized to establish committees and appoint additional persons who may not be members of the council, as necessary to effectuate its purposes.
- (7) The council's administrative functions shall be performed by the executive director of the Office of Legislative and Intergovernmental Services, appointed by the secretary of the Justice and Public Safety Cabinet and supported by the administrative, clerical, and other staff as allowed by budgetary limitations and as needed to fulfill the council's role and mission and to coordinate its activities.

➔Section 14. KRS 18A.005 is amended to read as follows:

As used in this chapter, unless the context indicates otherwise:

- (1) "Appointing authority" means the agency head or any person whom he has authorized by law to designate to act on behalf of the agency with respect to employee appointments, position establishments, payroll documents, register requests, waiver requests, requests for certification, or other position actions. Such designation shall be in writing and signed by both the agency head and his designee. Prior to the exercise of appointing authority, such designation shall be filed with the secretary;
- (2) "Base salary or wages" means the compensation to which an employee is entitled under the salary schedules adopted pursuant to the provisions of KRS 18A.030 and 18A.110. Base salary or wages shall be adjusted as provided under the provisions of KRS 18A.355 and 48.130;
- (3) "Board" means the Personnel Board created by KRS 18A.045;
- (4) "Career employee" shall mean a state employee with sixteen (16) or more years of permanent full-time state service, or the part-time employment equivalent of at least sixteen (16) years of full-time state service. The service may have been in the classified service, the unclassified service, or a combination thereof;
- (5) "Certification" means the referral of the name of one (1) or more qualified prospective employees by the secretary on request of an appointing officer for consideration in filling a position in the classified service;
- (6) "Class" means a group of positions sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training, experience, or skill, and such other characteristics that the same title, the same tests of fitness, and the same schedule of compensation have been or may be applied to each position in the group;
- (7) "Classified employee" means an employee appointed to a position in the classified service whose appointment and continued employment are subject to the classified service provisions of this chapter;
- (8) "Classified position" means a position in the executive branch of state government that is not exempt from the classified service under KRS Chapter 16, KRS 18A.115, KRS Chapter 151B, or any other provision of law;
- (9) "Classified service" includes all the employment subject to the terms of this chapter except for those positions expressly cited in KRS 18A.115; a "classified position" is a position in the classified service;
- (10) "Secretary" means the secretary of the Personnel Cabinet as provided for in KRS 18A.015;

- (11) "Demotion" means a change in the rank of an employee from a position in one (1) class to a position in another class having a lower minimum salary range or less discretion or responsibility;
- (12) "Cabinet" means the Personnel Cabinet provided for in KRS 18A.015, unless the context indicates otherwise;
- (13) "Eligible" refers to a person who has made a passing score on any examination required under KRS 18A.010 to 18A.200 and who has qualified to be placed on a register;
- (14) "Employee" means a person regularly appointed to a position in the state service for which he is compensated on a full-time, part-time, or interim basis;
- (15) "Federally funded time-limited employee" means an employee in the unclassified service, appointed to a position that is funded one hundred percent (100%) by a federal grant or grants. An employee appointed to a federally funded time-limited position shall be required to meet the minimum requirements for the classification in which he or she is hired and, subject to the provisions of KRS 18A.113, shall serve at the pleasure of the appointing authority during a period of time that shall not exceed the life of the federal grant that funds the position. A federally funded time-limited employee who has been aggrieved by notice of disciplinary action or termination, other than an action based on expiration of the federal grant funding, may petition the appointing authority of the agency for the opportunity to be heard by the appointing authority or his designee prior to the effective date of the disciplinary action or termination. The decision of the appointing authority shall be final except as provided by KRS 18A.095(14)~~(15)(a)~~ and 18A.140. A federally funded time-limited employee shall not have the right of appeal to the Personnel Board except as provided by KRS 18A.095(14)~~(15)(a)~~ and 18A.140;
- (16) "Federally funded position" means a full-time or a part-time position in which the unclassified employee is eligible for benefits at the same level as a classified employee in a permanent position;
- (17) "Full-time employee" means an employee in a full-time position;
- (18) "Full-time position" means a position, other than an interim position, requiring an employee to work at least thirty-seven and one-half (37.5) hours in a work week, except for the following:
  - (a) Positions in the state parks, where the work assigned is dependent upon fluctuations in tourism, may be assigned work hours from twenty-five (25) hours per week during the off seasons and remain in full-time positions; and
  - (b) Positions in health care facilities, which regularly involve three (3) consecutive days of twelve (12) hour shifts to cover weekends, shall be considered full-time;
- (19) "Initial probation" means the period of service following initial appointment to any position under KRS 18A.010 to 18A.200 which requires special observation and evaluation of an employee's work and which must be passed successfully before status may be conferred as provided in KRS 18A.110 and by the provisions of this chapter. If the appointee is granted leave in excess of twenty (20) consecutive work days during this period, his initial probation shall be extended for the same length of time as the granted leave to cover such absence;
- (20) "Interim employee" means an unclassified employee without status who has been appointed to an interim position that shall be less than nine (9) months duration;
- (21) "Interim position" means a position established to address a one-time or recurring need of less than nine (9) months duration and exempt from the classified service under KRS 18A.115;
- (22) "Part-time employee" means an employee in a part-time position;
- (23) "Part-time position" means a position, other than an interim position, requiring an employee to work less than one hundred (100) hours per month;
- (24) "Penalization" shall include, but not be limited to, demotion, dismissal, suspension, fines and other disciplinary actions, involuntary transfers; salary adjustments; any action that diminishes the level, rank, discretion, or responsibility of an employee without proper cause, including a reclassification or reallocation; and the abridgement or denial of other rights granted to state employees;
- (25) "Position" means an office or employment in an agency (whether part-time, full-time, or interim, occupied, or vacant) involving duties requiring the services of one (1) person;

- (26) "Promotion" means a change of rank of an employee from a position in one (1) class to a position in another class having a higher minimum salary or carrying a greater scope of discretion or responsibility;
- (27) "Promotional probation" means the period of service, consistent with the length of the initial probationary period, following the promotion of an employee with status which must be successfully completed in order for the employee to retain the position to which he has been promoted. If the employee is granted leave in excess of twenty (20) consecutive work days during this period, his promotional probation shall be extended for the same length of time as the granted leave to cover such absence;
- (28) "Reallocation" means the correction of the classification of an existing position by placement of the position into the classification that is appropriate for the duties the employee has been and shall continue to perform;
- (29) "Reclassification" shall mean the change in the classification of an employee when a material and permanent change in the duties or responsibilities of that employee occurs;
- (30) "Reemployment" shall mean the rehiring of an employee with status who has been laid off;
- (31) "Reemployment register" means the separate list of names of persons who have been separated from state service by reason of layoff. Reemployment registers shall be used as provided by the provisions of KRS 18A.110, 18A.130, and 18A.135;
- (32) "Register" means any official list of eligibles for a particular class and, except as provided in this chapter, placed in rank order according to the examination scores maintained for use in making original appointments or promotions to positions in the classified service;
- (33) "Reinstatement" shall mean the restoration of an employee who has resigned in good standing, or who has been ordered reinstated by the board or a court to a position in his former class, or to a position of like status and pay;
- (34) "Reversion" means either the returning of a status employee to his or her last position held in the classified service, if vacant, or the returning of a status employee to a vacant position in the same or similar job classification as his or her last position held in the classified service. Reversion occurs after a career employee is terminated other than for cause from the unclassified service or after a status employee fails to successfully complete promotional probation. Reversion after unsuccessful completion of promotional probation, or in the case of a career employee after termination from the unclassified service, may only be appealed to the Personnel Board under KRS 18A.095 (12)(13);
- (35) "Seniority" means the total number of months of state service;
- (36) "Status" means the acquisition of tenure with all rights and privileges granted by the provisions of this chapter after satisfactory completion of the initial probationary period by an employee in the classified service; and
- (37) "Transfer" means a movement of any employee from one (1) position to another of the same grade having the same salary ranges, the same level of responsibility within the classified service, and the same salary received immediately prior to transfer.

➔Section 15. KRS 18A.095 is amended to read as follows:

- (1)~~(a)~~ ~~The provisions of this section shall not apply to employees commissioned pursuant to the provisions of KRS 15A.370.~~
- ~~(b) Dismissals, demotions, suspensions, and other penalizations of these commissioned employees, and appeals relating thereto, shall be governed by the provisions of KRS 15A.371 and 15A.372.~~
- ~~(2)~~ A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.
- (2)~~(3)~~ Prior to dismissal, a classified employee with status shall be notified in writing of the intent to dismiss him. The notice shall also state:
- (a) The specific reasons for dismissal including:
1. The statutory or regulatory violation;
  2. The specific action or activity on which the intent to dismiss is based;

3. The date, time, and place of such action or activity; and
  4. The name of the parties involved; and
- (b) That the employee has the right to appear personally, or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee.
- ~~(3)~~~~(4)~~ The Personnel Cabinet shall prescribe and distribute a form to be completed and forwarded by an employee who wishes to appear before the head of the cabinet or agency or his designee, to each appointing authority. The form shall be attached to every notice of intent to dismiss and shall contain written instructions explaining:
- (a) The right granted an employee under the provisions of this section relating to pretermination hearings; and
  - (b) The time limits and procedures to be followed by all parties in pretermination hearings.
- ~~(4)~~~~(5)~~ No later than five (5) working days after receipt of the notice of intent to dismiss, excluding the day he receives the notice, the employee may request to appear, personally or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee.
- ~~(5)~~~~(6)~~ Unless waived by the employee, the appearance shall be scheduled within six (6) working days after receipt of an employee's request to appear before the head of the cabinet or agency or his designee, excluding the day his request is received.
- ~~(6)~~~~(7)~~ No later than five (5) working days after the employee appears before the head of the cabinet or agency or his designee, excluding the day of the appearance, the cabinet head or agency or his designee shall:
- (a) Determine whether to dismiss the employee or to alter, modify, or rescind the intent to dismiss; and
  - (b) Notify the employee in writing of the decision.
- ~~(7)~~~~(8)~~ If the cabinet or agency head or his designee determines that the employee shall be dismissed or otherwise penalized, the employee shall be notified in writing of:
- (a) The effective date of his dismissal or other penalization;
  - (b) The specific reason for this action, including:
    1. The statutory or regulatory violation;
    2. The specific action or activity on which the dismissal or other penalization is based;
    3. The date, time, and place of the action or activity; and
    4. The name of the parties involved; and
  - (c) That he may appeal the dismissal or other penalization to the board within sixty (60) days after receipt of this notification, excluding the day he receives notice.
- ~~(8)~~~~(9)~~ A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:
- (a) The demotion, suspension, or other penalization;
  - (b) The effective date of the demotion, suspension, or other penalization;
  - (c) The specific reason for the action including:
    1. The statutory or regulatory violation;
    2. The specific action or activity on which the demotion, suspension, or other penalization is based;
    3. The date, time, and place of the action or activity; and
    4. The name of the parties involved; and
  - (d) That he has the right to appeal to the board within sixty (60) days, excluding the day that he received notification.

- ~~(9)~~~~(10)~~ Any unclassified employee who is dismissed, demoted, suspended, or otherwise penalized for cause may, within thirty (30) days after the dismissal, demotion, suspension, or other form of penalization, appeal to the board for review thereof.
- ~~(10)~~~~(11)~~ (a) An employee whose position is reallocated shall be notified in writing by the appointing authority of:
1. The reallocation; and
  2. His right to request reconsideration by the secretary within ten (10) working days of receipt of the notice, excluding the day he receives notification.
- (b) He shall be provided with a form prescribed by the secretary on which to request reconsideration.
- (c) The employee shall file a written request for reconsideration of the reallocation of his position with the secretary in a manner and form prescribed by the secretary and shall be given a reasonable opportunity to be heard thereon by the secretary. The secretary shall make a determination within sixty (60) days after the request has been filed by an employee. After reconsideration of the request by the secretary, the employee may appeal to the board.
- ~~(11)~~~~(12)~~ Any state employee, applicant for employment, or eligible on a register may appeal to the board on the grounds that his right to inspect or copy records, including preliminary and other supporting documentation, relating to him has been denied, abridged, or impeded by a public agency. The board shall conduct a hearing to determine whether the records related to the employee, applicant, or eligible, and whether his right to inspect or copy these records was denied, abridged, or impeded. If the board determines that the records related to the employee and that the right to inspect or copy these records has been denied, abridged, or impeded, the board shall order the public agency to make them available for inspection and copying and shall charge the cost of the hearing to the public agency. A state employee, an applicant for employment, and an eligible on a register shall not have the right to inspect or to copy any examination materials.
- ~~(12)~~~~(13)~~ Any classified employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age forty (40) and above. Nothing in this section shall be construed to preclude any classified or unclassified employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.
- ~~(13)~~~~(14)~~ When an eligible's name is removed from a register, the secretary shall notify the eligible of his action and the reasons therefor, together with his right of appeal. An eligible's name shall be restored to the register upon presentation of reasons satisfactory to the secretary or in accordance with the decision of the board.
- ~~(14)~~~~(15)~~ (a) Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board.
- (b) Any applicant whose application for admission to an open-competitive examination has been rejected shall be notified of this rejection and the reasons therefor and may appeal to the board for reconsideration of his qualifications and for admission to the examination. Applicants may be conditionally admitted to an examination by the secretary pending reconsideration by the board.
- (c) Any applicant who has taken an examination may appeal to the board for a review of his rating in any part of the examination to assure that uniform rating procedures have been applied equally and fairly.
- (d) An appeal to the board by applicants or eligibles under subsections ~~(10)~~~~(11)~~ and ~~(12)~~~~(13)~~ of this section and under this subsection shall be filed in writing with the executive director not later than thirty (30) calendar days after the notification of the action in question was mailed.
- ~~(15)~~~~(16)~~ An evaluation may be appealed to the board if an employee has complied with the review procedure established in KRS 18A.110(7)(j).
- ~~(16)~~~~(17)~~ (a) Appeals to the board shall be in writing on an appeal form prescribed by the board. Appeal forms shall be available at the employee's place of work. The Personnel Cabinet shall be responsible for the distribution of these forms.
- (b) The appeal form shall be attached to any notice, or copy of any notice, of dismissal, demotion, suspension, fine, involuntary transfer, or other penalization, reallocation, or notice of any other action an

employee may appeal under the provisions of this section. The appeal form shall instruct the employee to state whether he is a classified or unclassified employee, his full name, his appointing authority, work station address and telephone number, and, if he has retained counsel at the time he files an appeal, the name, address, and telephone number of his attorney.

- (c) The form shall also instruct a classified employee to state the action he is appealing in a short, plain, concise statement of the facts. The form shall instruct an unclassified employee to make a short, plain, concise statement of the reason for the appeal and the cause given for his dismissal.
- (d) Upon receipt of the appeal by the board, the appointing authority and the Personnel Cabinet shall be notified and the board shall schedule a hearing.
- ~~(17)~~~~(18)~~ All administrative hearings conducted by the board shall be conducted in accordance with KRS Chapter 13B.
- ~~(18)~~~~(19)~~ (a) The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.
- (b) Any investigation by the board of any matter related to an appeal filed by an employee shall be conducted only upon notice to the employee, the employee's counsel, and the appointing authority. All parties to the appeal shall have access to information produced by the investigations and the information shall be presented at the hearing.
- ~~(19)~~~~(20)~~ Each appeal shall be decided individually, unless otherwise agreed by the parties and the board. The board shall not:
  - (a) Employ class action procedures; or
  - (b) Conduct test representative cases.
- ~~(20)~~~~(21)~~ Board members shall abstain from public comment about a pending or impending proceeding before the board. This shall not prohibit board members from making public statements in the course of their official duties or from explaining for public information the procedures of the board.
- ~~(21)~~~~(22)~~ An appeal to the board may be heard by the full board or one (1) or more of the following: Its executive director, its general counsel, any nonelected member of the board, or any hearing officer secured by the board pursuant to KRS 13B.030.
- ~~(22)~~~~(23)~~ (a) If the board finds that the action complained of was taken by the appointing authority in violation of laws prohibiting favor for, or discrimination against, or bias with respect to, his political or religious opinions or affiliations or ethnic origin, or in violation of laws prohibiting discrimination because of such individual's sex or age or disability, the appointing authority shall immediately reinstate the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal.
- (b) If the board finds that the action complained of was taken without just cause, the board shall order the immediate reinstatement of the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal.
- (c) If the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall direct the appointing authority to alter, modify, or rescind the disciplinary action.
- (d) In all other cases, the board shall direct the appointing authority to rescind the action taken or otherwise grant specific relief or dismiss the appeal.
- ~~(23)~~~~(24)~~ If a final order of the board is appealed, a court shall award reasonable attorney fees to an employee who prevails by a final adjudication on the merits as provided by KRS 453.260. This award shall not include attorney fees attributable to the hearing before the board.

- ~~(24)~~~~(25)~~ When any employee is dismissed and not ordered reinstated after the appeal, the board in its discretion may direct that his name be placed on an appropriate reemployment list for employment in any similar position other than the one from which he had been removed.
- ~~(25)~~~~(26)~~ After a final decision has been rendered by the board or court, an employee who prevails in his appeal shall be credited with the amount of leave time used for time spent at his hearing before the board or court. Employees who had an insufficient amount of leave time shall be credited with leave time equal to the amount of time spent at their hearings before the board or court.
- ~~(26)~~~~(27)~~ If the appointing authority appeals the final order of the board, unless the board rules otherwise, the reinstated employee shall remain in his former position, or a position of like status or pay, until the conclusion of the appeals process, at which time the appointing authority shall take action in accordance with the court order.
- ~~(27)~~~~(28)~~ For the purposes of subsections (2), (3), (4), (5), (6), *and* (7)~~, and (8)~~ of this section, the word "agency" means any agency not assigned to a cabinet for organizational purposes.
- ~~(28)~~~~(29)~~ Notwithstanding any other prescribed limitation of action, an employee that has been penalized, but has not received a written notice of his or her right to appeal as provided in this section, shall file his or her appeal with the Personnel Board within one (1) year from the date of the penalization or from the date that the employee reasonably should have known of the penalization.

➔Section 16. KRS 281.600 is amended to read as follows:

- (1) The Department of Vehicle Regulation shall exercise all administrative functions of the state in relation to motor transportation as defined in this chapter, and shall apply, as far as practicable, the administrative and judicial interpretations of the Federal Motor Carrier Act. It shall have the right to regulate motor carriers as provided in this chapter and, to that end, may establish reasonable requirements with respect to continuous and adequate service of transportation, systems of accounts, records and reports, preservation of records, and safety of operation and equipment. It may issue subpoenas, subpoenas duces tecum and orders of personal attendance of witnesses, and production of pertinent records for any proceeding before it, and permit the taking of depositions, all in accord with the Rules of Civil Procedure, and it shall have the power to promulgate administrative regulations as it may deem necessary to carry out the provisions of this chapter. The department shall have the authority to promulgate regulations regarding safety requirements for motor vehicles and the method of operation, including the adoption of any of the federal motor carrier safety regulations and any motor vehicle operating contrary to safety regulations shall be in violation of this section.
- (2) The provisions established by the Federal Highway Administration in Title 49, Part 393 of the United States Code of Federal Regulations shall not apply to:
  - (a) A motor vehicle or its towed unit having a fertilizer spreader attachment permanently mounted thereon, having a gross weight not to exceed thirty-six thousand (36,000) pounds, and used only for the transportation of bulk fertilizer; or
  - (b) A farm-wagon-type tank trailer of not more than two thousand (2,000) gallon capacity used during liquid fertilizer season as a field storage tank supplying fertilizer to a field applicator, and moved on a public highway for the purpose of bringing fertilizer from a local source of supply to a farm or field, or from one (1) farm or field to another, provided that the vehicle is being operated solely in intrastate transportation.
- (3) *The Department of Kentucky State Police shall exercise all administrative functions of the state pertaining to the motor carrier safety management audit program. This program shall be administered according to the provisions of the Federal Motor Carriers Safety Act and the federal regulations promulgated under that Act.*

➔Section 17. KRS 281.755 is amended to read as follows:

- (1) The Department of Kentucky State Police ~~and the Department of Kentucky Vehicle Enforcement~~ may at any time or place make an inspection of any motor vehicle operating under the provisions of this chapter. They may enter into and upon any such motor vehicle for the purpose of ascertaining whether or not any provision of this chapter or any order or rule or regulation of the department relating to such motor vehicles has been violated. Willful refusal to stop any such motor vehicle, when ordered to do so by any representative of the Department of Kentucky State Police ~~or the Department of Kentucky Vehicle Enforcement~~, or to permit the

representative to enter into or upon the motor vehicle for the purpose of inspection, shall be sufficient ground for the revocation or suspension of the certificate or permit of the motor carrier.

- (2) In the event that a peace officer orders a commercial motor vehicle to be taken to a storage or impoundment facility as a result of a violation which requires the vehicle to be moved, the driver of the commercial motor vehicle shall be granted the ability to drive the commercial motor vehicle to the storage or impoundment facility. If the driver elects to drive to the storage or impoundment facility, a peace officer shall escort the vehicle to the facility. This subsection shall not apply if the commercial motor vehicle is required to be impounded as a result of a violation of KRS 281A.210, an out-of-service order as defined in KRS 281A.010(26), or a serious traffic violation as defined in KRS 281A.010(29).

➔Section 18. KRS 281.880 is amended to read as follows:

- (1) (a) The Department of ***Kentucky State Police***~~[Vehicle Regulation in the Transportation Cabinet]~~ shall establish a motor carrier safety management audit program applicable to private or for-hire, intrastate or interstate motor carriers.
- (b) The Department of ***Kentucky State Police***~~[Vehicle Enforcement]~~ may perform safety inspections on vehicles operated by a motor carrier on public highways and may enter onto property owned, leased, controlled, or operated by a motor carrier to inspect any of its vehicles or inspect or copy records relating to vehicle safety, maintenance, or financial responsibility.
- (2) The ***Department of Kentucky State Police***~~[department]~~ may issue motor carrier safety ratings to any private or for-hire motor carrier which is based in Kentucky, has a terminal in Kentucky, or operates consistently in Kentucky. The safety rating scale and factors determining a carrier's safety rating shall be established by administrative regulation and shall be compatible with the scale and factors established by the Federal Highway Administration in Title 49 of the United States Code of Federal Regulations, Part 385, relating to safety ratings, in effect as of July 13, 1990, or as amended after that date.
- (3) The ***Department of Kentucky State Police***~~[department]~~ may determine the safety fitness of a motor carrier and may require the maintenance of or upgrade to a satisfactory safety rating.

➔Section 19. KRS 281.883 is amended to read as follows:

The ***Department of Kentucky State Police***~~[department]~~ shall by administrative regulation establish a system of administrative penalties for safety violations. These penalties shall be compatible with those set forth in United States Code Title 49, Section 521(b) as amended and any federal regulations adopted pursuant thereto. The ***Department of Kentucky State Police***~~[department]~~ shall by administrative regulation provide an administrative process for appealing a citation of a safety violation or the penalty imposed because of the violation.

➔Section 20. KRS 281A.090 is amended to read as follows:

- (1) Except when driving under a commercial driver's instruction permit and accompanied by the holder of commercial driver's license valid for the vehicle being driven, no person shall drive a commercial motor vehicle on the highways of this state unless the person holds a valid commercial driver's license with applicable endorsements valid for the vehicle he or she is driving.
- (2) No person shall drive a commercial motor vehicle on the highways of this state while his or her driving privilege for a commercial or noncommercial motor vehicle is suspended, revoked, or canceled, or while he or she is subject to a disqualification, or in violation of an out-of-service order.
- (3) The licensee shall have in his or her immediate possession at all times when operating a motor vehicle his or her commercial driver's license, and shall display the license upon demand to a circuit clerk, a license examiner, a peace officer, a State Police officer, or an inspector or officer of the Department of Vehicle Regulation~~[or the Department of Kentucky Vehicle Enforcement]~~. It shall be a defense to a violator of this subsection if the person so charged produces in court a commercial driver's license, issued to him or her before his or her arrest or violation and which was valid at that time.

➔Section 21. KRS 431.105 is amended to read as follows:

Notwithstanding any other statutory provisions to the contrary, all fines and forfeitures recovered in any court as a result of a conviction for the violation of any of the provisions of KRS 189.221, 189.222(1), or 189.270, which violation occurred on a state-maintained highway and arrest was made by any peace officer other than a member of the Department of Kentucky State Police,~~[Department of Kentucky Vehicle Enforcement]~~ Department of Highways, or Department of Vehicle Regulation, shall inure to the benefit of the state, shall be paid to the State Treasurer for the

use and benefit of the Department of Highways, and no part shall be returned to the local governmental units from which they were sent. These fines and forfeitures shall be paid into the State Treasury by the court collecting same and within thirty (30) days after imposition and collection.

➔Section 22. The following KRS sections are repealed:

15A.370 Department of Kentucky Vehicle Enforcement -- Employees may be commissioned as peace officers -- Enforcement powers -- Divisions in department.

15A.371 Charges against commissioned employees -- Procedure -- Hearing.

15A.372 Trial board for hearings on charges against commissioned employees -- Right to hearing -- Appeals.

➔Section 23. The General assembly hereby confirms Executive Order 2008-707, dated July 14, 2008, to the extent it is not otherwise confirmed or superceded by this Act.

**Signed by the Governor March 24, 2009.**

## CHAPTER 76

### (HB 414)

AN ACT relating to pharmacy audits.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

(1) *As used in Sections 1 to 3 of this Act, unless the context otherwise requires:*

(a) *"Administrator" has the meaning provided in KRS 304.9-051;*

(b) *"Auditing entity" means an insurer or an administrator that conducts or arranges for the performance of an audit of a pharmacy's records for the purpose of determining compliance with pharmacy benefit requirements; and*

(c) *"Insurer" has the meaning provided in KRS 304.17A-005.*

(2) *A provider agreement or provider contract between a pharmacy and an insurer, an agency of the Commonwealth, a pharmacy benefits administrator, or a pharmacy benefits manager that allows an audit of the pharmacy's records by an auditing entity shall comply with Sections 2 and 3 of this Act.*

➔SECTION 2. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*When an audit of the records of a pharmacy is conducted by an auditing entity, it shall be subject to the following conditions:*

(1) *The auditing entity shall give at least thirty (30) days' written notice to the pharmacy prior to conducting the audit for each audit to be conducted;*

(2) *An audit performed by the auditing entity that involves clinical or professional judgment shall be conducted in consultation with a pharmacist;*

(3) *A pharmacy may use the records of a hospital, physician, or other practitioner as defined in KRS 217.015(35), or transmitted by any means of communication, for purposes of validating pharmacy records with respect to orders or refills of a drug;*

(4) *The recoupment of claims shall be based on the actual overpayment or underpayment of claims unless the pharmacy agrees to a settlement to the contrary;*

(5) *A pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the auditing entity;*

(6) *The period covered by the audit shall not exceed two (2) years from the date the claim was submitted for payment except if a longer period is allowed by federal law or if there is evidence of fraud;*

- (7) *An audit shall not be scheduled during the first seven (7) calendar days of any month, unless consented to by the pharmacy;*
- (8) *A preliminary audit report shall be delivered to the pharmacy within one hundred twenty (120) days after the exit interview;*
- (9) *A final audit report shall be delivered to the pharmacy within six (6) months after receipt of the preliminary audit report or after all appeals have been exhausted, whichever is later;*
- (10) *The auditing entity shall allow a pharmacy at least thirty (30) days following receipt of the preliminary audit report to produce documentation to address any discrepancies found during an audit;*
- (11) *The final audit report shall provide claim-level detail of the amounts and reasons for each claim recovery found due. If no amounts have been found due, the final audit report shall so state;*
- (12) *The auditing entity shall not receive payment based on a percentage of the amount recovered in an audit; and*
- (13) *The auditing entity shall conduct an exit interview at the close of the audit. The exit interview shall be conducted at a time agreed to by the audited pharmacy. The interview shall provide the audited pharmacy an opportunity to:*
  - (a) *Respond to questions from the auditing entity;*
  - (b) *Review and comment on the initial findings of the auditing entity; and*
  - (c) *Provide additional documentation to clarify the initial findings of the auditing entity.*

➔SECTION 3. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The auditing entity conducting an audit shall establish an appeals process under which a pharmacy may appeal a final audit report. The auditing entity shall provide to the pharmacy, prior to or at the time of the delivery of the preliminary audit report, a written explanation of the appeals process, including the name, address, and phone number of the person to whom the appeal should be addressed.*
- (2) *Following the appeal if it is determined that an audit report or any portion thereof is unsubstantiated, the audit report or unsubstantiated portion shall be dismissed without the necessity of further proceedings.*
- (3) *The auditing entity shall not recoup disputed funds or collect interest on disputed funds until the final internal disposition of the audit, including the appeals process set forth in subsection (1) of this section.*

➔SECTION 4. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Sections 1 to 3 of this Act shall not apply to any audit conducted by or on behalf of a state agency or a Medicaid managed care organization pursuant to KRS Chapter 205.*

➔SECTION 5. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Sections 1 to 3 of this Act shall not apply to any audit conducted in which an allegation of fraud, willful misrepresentation, or abuse is made by the auditing entity regarding the audited pharmacy.*

**Signed by the Governor March 24, 2009.**

## CHAPTER 77

### (HB 416)

AN ACT relating to retirement.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 16.505 is amended to read as follows:

As used in KRS 16.505 to 16.652, unless the context otherwise requires:

- (1) "System" means the State Police Retirement System created by KRS 16.505 to 16.652;

- (2) "Board" means the board of trustees of the Kentucky Retirement Systems;
- (3) "Employer" or "State Police" means the Department of Kentucky State Police, or its successor;
- (4) "Current service" means the number of years and completed months of employment as an employee subsequent to July 1, 1958, for which creditable compensation was paid by the employer and employee contributions deducted except as otherwise provided;
- (5) "Prior service" means the number of years and completed months of employment as an employee prior to July 1, 1958, for which creditable compensation was paid to the employee by the Commonwealth. Twelve (12) months of current service in the system are required to validate prior service;
- (6) "Service" means the total of current service and prior service;
- (7) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the member's contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4), together with interest credited on such amounts as provided in KRS 16.505 to 16.652, and any other amounts the member shall have contributed, including interest credited. *For members who begin participating on or after September 1, 2008, "accumulated contributions" shall not include employee contributions that are deposited into accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, as prescribed by subsection (2)(b) of Section 22 of this Act;*
- (8) "Creditable compensation" means all salary and wages, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation," including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4). A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's total service with the system in which it is recorded if it is equal to or greater than one thousand dollars (\$1,000). Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, and other items determined by the board shall be excluded. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code. Creditable compensation shall also include elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4). For employees who begin participating on or after September 1, 2008, creditable compensation shall not include payments for compensatory time;
- (9) "Final compensation" means:
  - (a) For a member who begins participating before September 1, 2008, the creditable compensation of a member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during the three (3) year period, multiplied by twelve (12); the three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used; or
  - (b) For a member who begins participating on or after September 1, 2008, the creditable compensation of the member during the three (3) complete fiscal years he or she was paid at the highest average monthly rate divided by three (3). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit;
- (10) "Final rate of pay" means the actual rate upon which earnings of a member were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, or one (1) year;

- (11) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;
- (12) "Retirement allowance" means the retirement payments to which a retired member is entitled;
- (13) "~~Actuarial~~[Actuarially] equivalent[~~benefits~~]" means *a benefit*[~~benefits which are~~] of equal value when computed upon the basis of actuarial tables adopted by the board. *In cases*[~~, except that, in case~~] of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member, *unless the member has chosen the Social Security adjustment option as provided for in KRS 61.635(8), in which case the member's actual age shall be used*. No disability retirement option shall be less than the same option computed under early retirement;
- (14) "Authorized leave of absence" means any time during which a person is absent from employment but retained in the status of an employee in accordance with the personnel policy of the Department of Kentucky State Police;
- (15) "Normal retirement date" means:
- (a) For a member who begins participating before September 1, 2008, the first day of the month following a member's fifty-fifth birthday, except that for members over age fifty-five (55) on July 1, 1958, it shall mean January 1, 1959; or
  - (b) For a member who begins participating on or after September 1, 2008, the first day of the month following a member's sixtieth birthday;
- (16) "Disability retirement date" means the first day of the month following the last day of paid employment;
- (17) "Dependent child" means a child in the womb and a natural or legally adopted child of the member who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22);
- (18) "Optional allowance" means an actuarially equivalent benefit elected by the member in lieu of all other benefits provided by KRS 16.505 to 16.652;
- (19) "Act in line of duty" means an act occurring or a thing done, which, as determined by the board, was required in the performance of the duties specified in KRS 16.060. For employees in hazardous positions under KRS 61.592, an "act in line of duty" shall mean an act occurring which was required in the performance of the principal duties of the position as defined by the job description;
- (20) "Early retirement date" means:
- (a) For a member who begins participating before September 1, 2008, the retirement date declared by a member who is not less than fifty (50) years of age and has fifteen (15) years of service; or
  - (b) For a member who begins participating on or after September 1, 2008, the retirement date declared by a member who is not less than fifty (50) years of age and has fifteen (15) years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1) or another state-administered retirement system;
- (21) "Member" means any officer included in the membership of the system as provided under KRS 16.520 whose membership has not been terminated under KRS 61.535;
- (22) "Regular full-time officers" means the occupants of positions as set forth in KRS 16.010;
- (23) "Hazardous disability" as used in KRS 16.505 to 16.652 means a disability which results in an employee's total incapacity to continue as an employee in a hazardous position, but the employee is not necessarily deemed to be totally and permanently disabled to engage in other occupations for remuneration or profit;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, "beneficiary" does not mean an estate, trust, or trustee;
- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement

allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;

- (27) "Person" means a natural person;
- (28) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (29) "Delayed contribution payment" means an amount paid by an employee for purchase of current service. The amount shall be determined using the same formula in KRS 61.5525, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member;
- (30) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month. Last day of paid employment does not mean a date the employee receives payment for accrued leave, whether by lump sum or otherwise, if that date occurs twenty-four (24) or more months after previous contributions;
- (31) "Objective medical evidence" means reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including but not limited to chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests;
- (32) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year. ***The "fiscal year" shall be the limitation year used to determine contribution and benefit limits established by 26 U.S.C. sec. 415;***
- (33) "Participating" means an employee is currently earning service credit in the system as provided in KRS 16.543;~~and~~
- (34) "Month" means a calendar month; ***and***
- (35) ***"Membership date" means the date upon which the member began participating in the system as provided by KRS 16.543.***

➔Section 2. KRS 16.530 is amended to read as follows:

Under such rules and regulations as are adopted by the board, each employee becoming a member on July 1, 1958, shall have on file at the retirement office, on such forms as the board may prescribe, a statement of the facts pertaining to his status as a member which shall include a detailed description of all service rendered prior to July 1, 1958. Until such statement is filed, no member ~~or his beneficiary~~ shall be entitled to receive any benefits under KRS 16.505 to 16.652. As soon as practicable after said statement is filed, the system shall ascertain the amount of prior service, if any, to which each member is entitled and shall issue to each member a certificate certifying the length of such service rendered by him.

➔Section 3. KRS 16.555 is amended to read as follows:

All the assets of the system shall be held and invested in the State Police Retirement Fund and credited, according to the purpose for which they are held, to one (1) of ***three (3)***~~two (2)~~ accounts: the "member contribution account," ~~or~~ the "retirement allowance account," ***and accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, as prescribed by subsection (2)(b) of Section 22 of this Act.*** ~~and~~

➔Section 4. KRS 16.560 is amended to read as follows:

- (1) The member contribution account shall be the account to which all members' contributions, or contributions picked up by the employer after August 1, 1982, and interest allowances as provided in KRS 16.505 to 16.652 shall be credited, ***except as provided by subsection (2)(b) of Section 22 of this Act;*** only funds from this account shall be used to return accumulated contributions of a member when required by reason of any provision of KRS 16.505 to 16.652. Prior to the member's retirement, death, or refund in accordance with KRS 61.625, no funds shall be made available from the member's contribution account.

- (2) Each member's contribution or contribution picked up by the employer shall be credited to the individual account of the contributing member, *except as provided by subsection (2)(b) of Section 22 of this Act.*
- (3) (a) Each member on June 30 of each year shall have his individual account credited with interest.
- (b) For members who begin participating before September 1, 2008, interest shall be credited to their individual account at a rate determined by the board but not less than two and one-half percent (2.5%) per annum on the accumulated contributions of the member on June 30 of the preceding fiscal year.
- (c) For members who begin participating on or after September 1, 2008, interest shall be credited to their individual account at a rate of two and one-half percent (2.5%) per annum on the accumulated contributions of the member on June 30 of the preceding fiscal year.
- (d) The amounts of interest credited to a member's account under this subsection shall be transferred from the retirement allowance account.
- (4) Upon the retirement of a member, his accumulated contribution shall be transferred from the member's contribution account to the retirement allowance account.
- (5) Included as a part of such member's contribution account shall be his accumulated contributions in the Kentucky Employees Retirement System, if any, transferred to this system.

➔Section 5. KRS 16.576 is amended to read as follows:

- (1) (a) Any member who begins participating before September 1, 2008, who has at least five (5) years of service credit may retire at his normal retirement date, or subsequent thereto, upon written notification to the system, setting forth at what date the retirement is to become effective, if the effective date shall be after his last day of service and subsequent to the filing of the notice at the retirement office.
- (b) Any member who begins participating on or after September 1, 2008, who has at least five (5) years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1) or another state-administered retirement system may retire at his or her normal retirement date, or subsequent thereto, upon written notification to the system, setting forth what date the retirement is to become effective, if the effective date shall be after his or her last day of service and subsequent to the filing of the notice at the retirement office.
- (2) The member shall have the right to elect to have his retirement allowance payable under subsection (3), (4), or (6) of this section or any one (1) of the plans set forth in KRS 61.635.
- (3) (a) Effective August 1, 1990, a member of the Kentucky State Police Retirement System may elect to receive an annual retirement allowance, payable monthly during his lifetime, equal to two and five-tenths percent (2.5%) of final compensation for each year of service credit. Effective August 1, 1988, a member of the County Employees Retirement System covered by this section may elect to receive an annual retirement allowance, payable monthly during his lifetime, equal to two and five-tenths percent (2.5%) of final compensation for each year of service credit. Effective August 1, 1988, a member of the Kentucky Employees Retirement System covered by this section may elect to receive an annual retirement allowance, payable monthly during his lifetime, equal to two and forty-nine hundredths percent (2.49%) of final compensation for each year of service credit. The annual retirement allowance for a member covered by this section shall not exceed the maximum benefit as set forth in the Internal Revenue Code.
- (b) A member of the State Police Retirement System, a member of the Kentucky Employees Retirement System covered by this section, or a member of the County Employees Retirement System covered by this section, whose participation begins on or after September 1, 2008, shall receive an annual retirement allowance, payable monthly during his or her lifetime, equal to:
1. One and three-tenths percent (1.3%) of final compensation for each year of service credit if the employee has earned ten (10) or less years of service at retirement;
  2. One and one-half percent (1.5%) of final compensation for each year of service credit if the employee has earned greater than ten (10) but no more than twenty (20) years of service at retirement;
  3. Two and one-quarter percent (2.25%) of final compensation for each year of service credit if the employee has earned greater than twenty (20) but less than twenty-five (25) years of service at retirement; or

4. Two and one-half percent (2.5%) of final compensation for each year of service credit if the employee has earned twenty-five (25) or more years of service at retirement.
- (4) The member may elect to receive a monthly retirement allowance payable for ten (10) years certain, actuarially equivalent to the retirement allowance payable under subsection (3) of this section. If the member should become deceased prior to the expiration of ten (10) years, his beneficiary, *unless the beneficiary is the member's estate*, shall receive the remaining payments monthly for the duration of the ten (10) years. *If the member's estate is the beneficiary, the member's estate shall receive a lump-sum payment which shall be the actuarial equivalent to the remaining payments.* The provisions of KRS 61.702 notwithstanding, the member who retired on June 17, 1978, or thereafter, and his spouse and *eligible* dependents ~~or beneficiary~~ shall continue to receive the insurance benefits to which they are entitled pursuant to KRS 61.702 after the expiration of ten (10) years. Effective with any insurance contract procured, or self-insurance plan instituted, after July 15, 1990, a member who retired prior to June 17, 1978, and his spouse and *eligible* dependents ~~or beneficiary~~ shall receive insurance benefits pursuant to KRS 61.702 upon payment by the member or beneficiary of the entire cost of the required insurance premium.
- (5) Notwithstanding any other provisions of this section, upon written notification to the system, a member shall have the option to defer his election to receive his retirement allowance. The retirement allowance payable under a deferred option shall be increased to reflect the deferred receipt of benefits.
- (6) In lieu of any other benefits due under KRS 16.505 to 16.652, a member who begins participating before September 1, 2008, who has attained age fifty-five (55) and who has attained at least one (1) month of service credit but no more than fifty-nine (59) months of service credit may elect to receive an annual retirement allowance, payable monthly or less frequently as determined by the board, which shall be determined by multiplying his accumulated contributions by two (2) and converting this amount to an annual retirement allowance based on an annuity rate adopted by the board which would pay the actuarial equivalent of twice his accumulated contributions over the lifetime of the retired member.

➔Section 6. KRS 16.578 is amended to read as follows:

- (1) *If a member dies prior to retirement or before the first benefit payment has been issued by the State Treasurer, the member's beneficiary shall be eligible for the benefits provided by this section if the member had on file a written designation of a beneficiary with the retirement office and the member met the following conditions at the date of his or her death:*
- (a) *The member was eligible to retire under KRS 16.576 or 16.577;*
  - (b) *The member was in active employment or on authorized leave of absence with five (5) or more years of service credit and died prior to his or her normal retirement date; or*
  - (c) *The member was not in active employment or on authorized leave of absence with twelve (12) or more years of service credit and died prior to his or her normal retirement date.*
- (2) *If the beneficiary eligible for benefits as provided in subsection (1) of this section is a single person, then the beneficiary may elect to receive:*
- (a) *A monthly benefit payable for the life of the beneficiary that is equal to the benefit that would have been paid had the member retired immediately prior to his or her date of death and elected to receive benefits payable under the survivorship one hundred percent (100%) option as provided in KRS 61.635(2);*
  - (b) *A monthly benefit payable for the life of the beneficiary under the beneficiary Social Security adjustment option as provided in KRS 61.635(9) that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;*
  - (c) *A monthly benefit payable for a period of sixty (60) months that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;*
  - (d) *A monthly benefit payable for a period of one hundred twenty (120) months that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;*
  - (e) *A monthly benefit payable for a period of one hundred twenty (120) months that is equivalent to the benefit the member would have been entitled to receive based on his or her years of service and final compensation at the date of his or her death reduced by the survivorship fifty percent (50%) factor as*

*provided for in KRS 61.635(4), then reduced by fifty percent (50%), and that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection; or*

- (f) *The higher of a refund of accumulated contributions and interest as described in KRS 61.625(1) or a one (1) time lump-sum payment which shall be the actuarial equivalent of the amount payable under paragraph (a) of this subsection for a period of sixty (60) months.*
- (3) *If the beneficiary eligible for benefits as provided in subsection (1) of this section are multiple beneficiaries or a trust, then the multiple beneficiaries by consensus or the trustee may elect to receive the actuarial equivalent amounts payable under paragraph (c), (d), (e), or (f) of subsection (2) of this section using the assumption that the beneficiary's age is the same as the member's age.*
- (4) *If the beneficiary eligible for benefits as provided in subsection (1) of this section is the member's estate, then the beneficiary shall receive the higher of a refund of accumulated contributions and interest as described in KRS 61.625(1) or the one (1) time lump-sum payment payable under paragraph (f) of subsection (2) of this section, using the assumption that the beneficiary's age is the same as the member's age.*
- (5) *Payments of taxable distributions made pursuant to this section shall be subject to state and federal tax as appropriate.* ~~If a member, eligible to retire as provided in KRS 16.576, dies at any time before the first benefit payment has been issued by the State Treasurer and has on file in the retirement office at the time of his death a written designation of a beneficiary, the beneficiary may elect to receive an annual benefit payable monthly which shall be equal to the benefit that would have been paid had the member retired immediately prior to his date of death and elected to receive payments under subsection (2) of KRS 61.635 or the beneficiary may elect the actuarial equivalent payable for sixty (60) months certain or the beneficiary may elect the actuarial equivalent payable for one hundred twenty (120) months certain, or the beneficiary may elect to receive the beneficiary Social Security adjustment payment under subsection (9) of KRS 61.635 or the beneficiary may elect the actuarial equivalent refund.~~
- ~~(2) If a member in active employment or on authorized leave of absence with five (5) or more years of service dies at any time before his normal retirement date and has on file in the retirement office at the time of his death a written designation of a beneficiary, the beneficiary may elect to receive an annual benefit payable monthly commencing in the month following the member's death which shall be equal to the benefit the member would have been entitled to receive, based on his age, years of service, and final compensation at the date of his death, had the member been eligible for retirement and had he chosen benefits payable under subsection (2) of KRS 61.635 or the beneficiary may elect the actuarial equivalent payable for sixty (60) months certain or the beneficiary may elect the actuarial equivalent payable for one hundred twenty (120) months certain, or the beneficiary may elect to receive the beneficiary Social Security adjustment payment under subsection (9) of KRS 61.635 or the beneficiary may elect the actuarial equivalent refund.~~
- ~~(3) If a member, not in active employment nor on authorized leave of absence with twelve (12) or more years of service, dies at any time before his normal retirement date and has on file in the retirement office at the time of his death a written designation of a beneficiary, the beneficiary may elect to receive an annual benefit payable monthly commencing in the month following the member's death which shall be equal to the benefit the member would have been entitled to receive, based on his age, years of service, and final compensation at the date of his death, had the member been eligible for retirement and had he chosen benefits payable under subsection (2) of KRS 61.635 or the beneficiary may elect the actuarial equivalent payable for sixty (60) months certain or the beneficiary may elect the actuarial equivalent payable for one hundred twenty (120) months certain, or the beneficiary may elect to receive the beneficiary Social Security adjustment payment under subsection (9) of KRS 61.635 or the beneficiary may elect the actuarial equivalent refund.~~
- ~~(4) An alternative calculation of benefits payable to the beneficiary under subsection (1), (2) or (3) of this section shall be determined by computing an annual benefit payable commencing in the month following the member's death which shall be equivalent to the benefit the member would have been entitled to receive based on his years of service and final compensation at the date of his death reduced by the survivorship fifty percent (50%) factor as provided for in KRS 61.635(4), then reduced by fifty percent (50%) and the actuarial equivalent payable for one hundred twenty (120) months certain shall be determined, or the beneficiary may elect to receive the beneficiary Social Security adjustment payment under subsection (9) of KRS 61.635.~~
- ~~(5) If the member, subject to subsection (1), (2), (3), or (4) of this section, had on file a written designation of multiple beneficiaries, or his estate, trust, or trustee, the multiple beneficiaries by consensus or the administrator or executor of the estate or trustee may elect to receive the actuarial equivalent to the benefit~~

~~allowable under subsection (1), (2), (3), or (4) of this section given the assumptions that the beneficiary's age is the same as the member's, and that the member had chosen benefits payable monthly for sixty (60) months certain, or one hundred and twenty (120) months certain, or an actuarial equivalent refund.~~

- ~~(6) The beneficiary may elect to receive a one (1) time lump sum payment which shall be the actuarial equivalent of the amount payable under KRS 61.635(2) for a period of sixty (60) months. In the case of designation of multiple beneficiaries, an estate, trust, or trustee, the multiple beneficiaries by consensus, trustee, executor, or administrator of the estate may elect to receive a one (1) time lump sum payment which shall be the actuarial equivalent of the amount payable under KRS 61.635(2), assuming the beneficiary's age to be the same as the member's, for a period of sixty (60) months.~~
- ~~(7) In the case of a single beneficiary who is a person, the highest monthly benefit determined under subsection (1), (2), (3), (4), or (6) of this section for a life annuity, for payments for sixty (60) months certain, for payments for one hundred twenty (120) months certain, for the actuarial equivalent refund or for the beneficiary Social Security payment shall be tendered to the beneficiary. In the case of designation of multiple beneficiaries, an estate, trust, or trustee, the highest monthly benefit determined under subsection (1), (2), (3), (4), (5), or (6) of this section for payments for sixty (60) months certain or one hundred and twenty (120) months certain or the actuarial equivalent refund shall be tendered to the multiple beneficiaries, trustee, administrator, or executor of the estate.]~~

➔Section 7. KRS 61.510 is amended to read as follows:

As used in KRS 61.510 to 61.705, unless the context otherwise requires:

- (1) "System" means the Kentucky Employees Retirement System created by KRS 61.510 to 61.705;
- (2) "Board" means the board of trustees of the system as provided in KRS 61.645;
- (3) "Department" means any state department or board or agency participating in the system in accordance with appropriate executive order, as provided in KRS 61.520. For purposes of KRS 61.510 to 61.705, the members, officers, and employees of the General Assembly and any other body, entity, or instrumentality designated by executive order by the Governor, shall be deemed to be a department, notwithstanding whether said body, entity, or instrumentality is an integral part of state government;
- (4) "Examiner" means the medical examiners as provided in KRS 61.665;
- (5) "Employee" means the members, officers, and employees of the General Assembly and every regular full-time, appointed or elective officer or employee of a participating department, including the Department of Military Affairs. The term does not include persons engaged as independent contractors, seasonal, emergency, temporary, interim, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 61.510 to 61.705;
- (6) "Employer" means a department or any authority of a department having the power to appoint or select an employee in the department, including the Senate and the House of Representatives, or any other entity, the employees of which are eligible for membership in the system pursuant to KRS 61.525;
- (7) "State" means the Commonwealth of Kentucky;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1956, except that for members, officers, and employees of the General Assembly this date shall be January 1, 1960, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided, and each member, officer, and employee of the General Assembly shall be credited with a month of current service for each month he serves in the position;
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1956, for which creditable compensation was paid; except that for members, officers, and employees of the General Assembly, this date shall be January 1, 1960. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work; provided, however, that each member, officer, and employee of the General

Assembly shall be credited with a month of prior service for each month he served in the position prior to January 1, 1960. Twelve (12) months of current service in the system are required to validate prior service;

- (12) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), together with interest credited on such amounts and any other amounts the member shall have contributed thereto, including interest credited thereon. ***For members who begin participating on or after September 1, 2008, "accumulated contributions" shall not include employee contributions that are deposited into accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, as prescribed by subsection (2)(b) of Section 22 of this Act;***
- (13) "Creditable compensation" means all salary, wages, tips to the extent the tips are reported for income tax purposes, and fees, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation," including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4). For members of the General Assembly, it shall mean all amounts which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation," including employee contributions picked up after August 1, 1982, pursuant to KRS 6.505(4) or 61.560(4). A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's total service with the system in which it is recorded if it is equal to or greater than one thousand dollars (\$1,000). In cases where compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, and other items determined by the board shall be excluded. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code. Creditable compensation shall also include elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4). For employees who begin participating on or after September 1, 2008, creditable compensation shall not include payments for compensatory time;
- (14) "Final compensation" of a member means:
- (a) For a member who begins participating before September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;
- (b) For a member who is not employed in a hazardous position, as provided in KRS 61.592, whose effective retirement date is between August 1, 2001, and January 1, 2009, and whose total service credit is at least twenty-seven (27) years and whose age and years of service total at least seventy-five (75), final compensation means the creditable compensation of the member during the three (3) fiscal years the member was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) years period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used. Notwithstanding the provision of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance;
- (c) For a member who begins participating before September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;

- (d) For a member who begins participating on or after September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) complete fiscal years immediately preceding retirement divided by five (5). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit; or
  - (e) For a member who begins participating on or after September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) complete fiscal years he was paid at the highest average monthly rate divided by three (3). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit;
- (15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, nineteen hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;
- (16) "Retirement allowance" means the retirement payments to which a member is entitled;
- (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables that are ~~from time to time~~ adopted by the board. ~~except~~ In cases of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member, ***unless the member has chosen the Social Security adjustment option as provided for in KRS 61.635(8), in which case the member's actual age shall be used.*** No disability retirement option shall be less than the same option computed under early retirement;
- (18) "Normal retirement date" means the sixty-fifth birthday of a member, unless otherwise provided in KRS 61.510 to 61.705;
- (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year. ***The "fiscal year" shall be the limitation year used to determine contribution and benefit limits as established by 26 U.S.C. sec. 415;***
- (20) "Officers and employees of the General Assembly" means the occupants of those positions enumerated in KRS 6.150. The term shall also apply to assistants who were employed by the General Assembly for at least one (1) regular legislative session prior to July 13, 2004, who elect to participate in the retirement system, and who serve for at least six (6) regular legislative sessions. Assistants hired after July 13, 2004, shall be designated as interim employees;
- (21) "Regular full-time positions," as used in subsection (5) of this section, shall mean all positions that average one hundred (100) or more hours per month determined by using the number of months actually worked within a calendar or fiscal year, including all positions except:
- (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and which may recur regularly from year to year, the period of time shall not exceed nine (9) months;
  - (b) Emergency positions which are positions which do not exceed thirty (30) working days and are nonrenewable;
  - (c) Temporary positions which are positions of employment with a participating department for a period of time not to exceed nine (9) months;
  - (d) Part-time positions which are positions which may be permanent in duration, but which require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty; and
  - (e) Interim positions which are positions established for a one-time or recurring need not to exceed nine (9) months;
- (22) "Delayed contribution payment" means an amount paid by an employee for purchase of current service. The amount shall be determined using the same formula in KRS 61.5525, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and

considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;

- (23) "Parted employer" means a department, portion of a department, board, or agency, such as Outwood Hospital and School, which previously participated in the system, but due to lease or other contractual arrangement is now operated by a publicly held corporation or other similar organization, and therefore is no longer participating in the system;
- (24) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;
- (25) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (26) "Beneficiary" means the person or persons or estate or trust or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, "beneficiary" does not mean an estate, trust, or trustee;
- (27) "Recipient" means the retired member or the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;
- (28) "Level-percentage-of-payroll amortization method" means a method of determining the annual amortization payment on the unfunded *actuarial accrued*~~past service~~ liability as expressed as a percentage of payroll over a set period of years. Under this method, the percentage of payroll shall be projected to remain constant for all years remaining in the set period and the unfunded *actuarially accrued*~~past service~~ liability shall be projected to be fully amortized at the conclusion of the set period;
- (29) "Increment" means twelve (12) months of service credit which are purchased. The twelve (12) months need not be consecutive. The final increment may be less than twelve (12) months;
- (30) "Person" means a natural person;
- (31) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (32) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month. Last day of paid employment does not mean a date the employee receives payment for accrued leave, whether by lump sum or otherwise, if that date occurs twenty-four (24) or more months after previous contributions;
- (33) "Objective medical evidence" means reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including but not limited to chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests;
- (34) "Participating" means an employee is currently earning service credit in the system as provided in KRS 61.543;~~and~~
- (35) "Month" means a calendar month; *and*
- (36) ***"Membership date" means the date upon which the member began participating in the system as provided in KRS 61.543.***

➔Section 8. KRS 61.540 is amended to read as follows:

- (1) Under administrative regulations promulgated by the board, each member and each employer shall have on file at the retirement office, in the form the board prescribes, a statement of the facts pertaining to the member and other information the system requires. Until the statement is filed, no member ~~or his beneficiary~~ shall be eligible to receive any benefits under KRS 61.510 to 61.705 and 78.510 to 78.852.

- (2) The system shall prepare and make available upon request to all members a summary plan description, written in a manner that can be understood by the average member or beneficiary, and sufficiently accurate and comprehensive to reasonably apprise them of their rights and obligations under the provisions of KRS 16.505 to 16.652, 61.510 to 61.705 and 78.510 to 78.852.
- (3) The summary plan description shall include:
  - (a) The name of the retirement system, the name and address of the executive director, and the name, address and title of each member of the board of trustees;
  - (b) The name and address of the person designated for the service of legal process;
  - (c) The system's requirements for participation and benefits;
  - (d) A description of retirement formulas for normal, early and disability retirement, and survivor benefits;
  - (e) A description of the requirements for vesting of pension benefits;
  - (f) A reasonable list of circumstances which would result in disqualification, ineligibility, or denial or loss of benefits;
  - (g) The sources of financing retirement benefits, and statutory requirements for funding;
  - (h) A statement after each actuarial valuation as to whether funding requirements are being met; and
  - (i) The procedures to be followed in presenting claims for benefits under the plan, and the remedies available under the plan for the redress of claims which are denied in whole or in part.
- (4) The system may publish the summary plan description in the form of a comprehensive pamphlet or booklet, or in the form of periodic newsletters which shall incorporate all the information required in the summary plan description within a period of two (2) years. Any changes in statutory requirements or administrative practices which alter the provisions of the plan as described in the summary plan description shall be summarized as required in subsection (2) of this section and shall be made available upon request to members in the form of a supplement to a comprehensive booklet, or reported in the periodic newsletter.
- (5) The system shall make available upon request to retirees and beneficiaries the summary plan description.

➔Section 9. KRS 61.541 is amended to read as follows:

~~{(1)—}The creditable compensation of fee officers who receive salary, fees, maintenance, or other perquisites as a result of their official duties is the gross amount received decreased by the cost of salary paid deputies and clerks and the cost of office supplies and other official expenses.~~

~~{(2)—}Each officer shall estimate the amount of creditable compensation he expects to receive during a calendar year and shall report and pay employee contributions monthly on one twelfth (1/12) of the estimated creditable compensation.~~

~~{(3)—}On or before April 30 of each fiscal year, each officer shall have on file at the retirement office a report of his actual creditable compensation during the previous calendar year. This report shall be in the form of an affidavit and shall be used by the retirement system as a basis of adjusting the individual's account in the retirement system.~~

~~{(4)—}The retirement office shall make a calculation of the amount of the additional contributions due or the excess contributions paid during the previous calendar year. If additional contributions are due, both the officer and employer shall pay such contributions on or before June 30 of the year in which the recalculation was made. If the recalculation shows that excess contributions have been paid, both the officer and the employer shall be reimbursed the amount of overpayment.~~

~~{(5)—}Refund of contributions or retirement allowances which might otherwise be due to the officer shall be withheld until the provisions of this section have been fully met.~~

➔Section 10. KRS 61.552 is amended to read as follows:

- (1) Any employee participating in one (1) of the state-administered retirement systems who has been refunded his accumulated contributions under the provisions of KRS 16.645(21)~~{(22)}~~, 61.625, or 78.545(15), thereby losing service credit, may regain the credit by paying to the system from which he received the refund or

refunds the amount or amounts refunded with interest at a rate determined by the board of the respective retirement system. The payment, including interest as determined by the board, shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. The payments shall not be picked up, as described in KRS 61.560(4), by the employer.

- (2) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, and who did not elect membership in the County Employees Retirement System, as provided in KRS 78.540(2), may obtain credit in the County Employees Retirement System for prior service and for current service by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.
- (3) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, and who did not elect membership in the Kentucky Employees Retirement System, as provided in KRS 61.525(2), may obtain credit in the Kentucky Employees Retirement System for prior service and for current service by paying to the system a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.
- (4) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, may obtain credit in the Kentucky Employees Retirement System for current service between July 1, 1956, and the effective date of participation of his department by paying to the system a delayed contribution payment for the service he would have received had his department participated on July 1, 1956. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.
- (5)
  - (a) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, may obtain credit in the County Employees Retirement System for current service between July 1, 1958, and the effective date of participation of his county by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had his county participated on July 1, 1958. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer.
  - (b) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may obtain credit for the period of his service with an area development district created pursuant to KRS 147A.050 or with a business development corporation created pursuant to KRS 155.001 to 155.230 if that service was not covered by a state-administered retirement system. The member shall pay to the retirement system in which he participates a delayed contribution payment, as determined by the board's actuary. The employee may obtain credit for employment with a business development corporation only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. Payment may be by lump sum or the employee may pay by increments.
- (6) After August 1, 2000, service credit obtained under the subsections of this section which do not require the employee to have a minimum number of years of service credit to be eligible to make a purchase shall be disallowed and the recontribution of refund, including interest as determined by the board or other payment, if any, shall be paid to the member if the member does not obtain for service performed six (6) months' additional current service credit in one (1) of the state-administered retirement systems. The service requirement shall be waived if the member dies or becomes disabled as provided for by KRS 16.582 or 61.600.

- (7) The members shall not receive benefit of service for the same period of time in another public defined benefit retirement fund.
- (8) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months' service if age sixty-five (65) or at least sixty (60) months' service if under age sixty-five (65) in the retirement systems administered by the Kentucky Retirement Systems, who formerly worked for a state university in a position which would have qualified as a regular full-time position had the university been a participating department, and who did not participate in a defined benefit retirement program at the university may obtain credit in the employee's account in the County Employees Retirement System, the Kentucky Employees Retirement System, or the State Police Retirement System for prior and current service by paying either retirement system a delayed contribution payment for the service he would have received had his period of university employment been covered by the County Employees, Kentucky Employees Retirement System, or State Police Retirement System. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum, or the employee may pay by increments.
- (9)
  - (a) Effective August 1, 1980, any county participating in the County Employees Retirement System may purchase current service, between July 1, 1958, and participation date of the county, for present employees of the county who have obtained coverage under KRS 78.540(2);
  - (b) Effective July 1, 1973, any department participating in the Kentucky Employees Retirement System may purchase current service between July 1, 1956, and participation date of the department, for present employees of the department who were employees on the participation date of the department and elected coverage under KRS 61.525(2);
  - (c) Cost of the service credit purchased under this subsection shall be determined by computing the discounted value of the additional service credit based on an actuarial formula recommended by the board's consulting actuary and approved by the board. A department shall make payment for the service credit within the same fiscal year in which the option is elected. The county shall establish a payment schedule subject to approval by the board for payment of the service credit. The maximum period allowed in a payment schedule shall be ten (10) years with interest at the rate actuarially assumed by the board; however, a shorter period is desirable and the board may approve any schedule provided it is not longer than a ten (10) year period;
  - (d) If a county or department elects the provisions of this subsection, any present employee who would be eligible to receive service credit under the provisions of this subsection and has purchased service credit under subsection (4) or (5) of this section shall have his payment for the service credit refunded with interest at the rate paid under KRS 61.575 or 78.640;
  - (e) Any payments made by a county or department under this subsection shall be deposited to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated contributions of the individual members.
- (10) Interest paid by a member of the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System under this section or other similar statutes under KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852 prior to June 19, 1976, shall be credited to the individual member's contribution account in the appropriate retirement system and considered as accumulated contributions of the member.
- (11) Employees who served as assistants to officers and employees of the General Assembly who have at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems and who were unable to acquire service under KRS 61.510(20) may purchase credit for the service performed after January 1, 1960. Service credit under this section shall be obtained by the payment of a delayed contribution which shall not be picked up by the employer as described in KRS 61.560(4).
- (12)
  - (a) Effective August 1, 1988, any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may purchase service credit for interim, seasonal, emergency, or temporary employment or part-time employment averaging one hundred (100) or more hours of work

per month on a calendar or fiscal year basis. If the average number of hours of work is less than one hundred (100) per month, the member shall be allowed credit only for those months he receives creditable compensation for one hundred hours of work. The cost will be determined as a delayed contribution payment for the period of time involved, which shall not be picked up by the employer as described in KRS 61.560(4).

- (b) Any noncertified employee of a school board who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may purchase service credit for part-time employment prior to the 1990-91 school year which averaged eighty (80) or more hours of work per month on a calendar or fiscal year basis by paying to the County Employees Retirement System a delayed contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 78.610(4), by the employer. Payment may be by lump sum or the employee may pay by increments. If the average number of hours of work is less than eighty (80) per month, the noncertified employee of a school board shall be allowed credit only for those months he receives creditable compensation for eighty (80) hours of work. The cost will be determined as a delayed contribution payment, which shall not be picked up by the employer as described in KRS 78.610(4).
- (13) A retired member, who is contributing to one (1) of the state-administered retirement programs under the provisions of KRS 61.637(1) to (4) and purchases service credit under this section in the system or systems from which he is retired, shall have his retirement allowance recomputed:
- (a) Upon termination from employment, if the member is contributing to the same system or systems from which he was retired; or
  - (b) Upon completion of six (6) months' service credit as required under subsection (6) of this section, if the member is contributing to a system other than the system or systems from which he is retired.
- (14) Any employee participating in one (1) of the systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may obtain credit for prior or current service for any period of approved educational leave, or for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, by paying to the respective retirement system a delayed contribution payment. The employee may also obtain credit for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, but only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.
- (15) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may obtain credit for prior or current service for any period of authorized maternity leave, unpaid leave authorized under the Federal Family and Medical Leave Act, or for any period of authorized sick leave without pay, by paying to the respective retirement system a delayed contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.
- (16) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may purchase service credit under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852 by making installment payments in lieu of a lump-sum payment.
- (a) The cost of the service shall be computed in the same manner as for a lump-sum payment which shall be the principal; and interest, at the actuarial rate in effect at the time the member elects to make the purchase compounded annually, shall be added for the period that the installments are to be made. Multiple service purchases may be combined under a single installment purchase; however, no employee may make more than one (1) installment purchase at the same time. ~~Once multiple service purchases have been combined in an installment purchase, the employee may not separate the purchases or pay a portion of one (1) of the purchases.~~ The employee may elect to stop the installment payments by notifying the retirement system; may have the installment purchase recalculated to add one (1) or

more additional service purchases; or may pay by lump sum the remaining principal *or a portion of the remaining principal*.

- (b) One (1) year of installment payments shall be made for each one thousand dollars (\$1,000) or any part thereof of the total cost, except that the total period allowed for installments shall not be less than one (1) year and shall not exceed five (5) years.
  - (c) The employee shall pay the installments by payroll deduction. Upon notification by the retirement system, the employer shall report the installment payments either monthly or semimonthly continuously over each twelve (12) month period at the same time as, but separate from, regular employee contributions on the forms or by the computer format specified by the board. The payments made under this subsection shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 61.560(4) and no employer contributions shall be paid on the installments.
  - (d) The retirement system shall determine how much of the total cost represents payment for one (1) month of the service to be purchased and shall credit one (1) month of service to the member's account each time this amount has been paid. The first service credited shall represent the first calendar month of the service to be purchased and each succeeding month of service credit shall represent the succeeding months of that service.
  - (e) If the employee elects to stop the installment payments, dies, retires, or does not continue employment in a position required to participate in the retirement system, the member, or in the case of death, the beneficiary, shall have sixty (60) days to pay the remaining principal *or a portion of the remaining principal* of the purchase by lump sum, except that payment by the member shall be made prior to the effective retirement date. If the member or beneficiary does not pay the remaining cost, the retirement system shall refund to the member or the beneficiary the payment, payments, or portion of a payment that does not represent a full month of service purchased.
  - (f) If the employer does not report installment payments on an employee for sixty (60) days, except in the case of employees on military leave or sick leave without pay, the installment purchase shall cease and the retirement system shall refund to the employee the payment, payments, or portion of a payment that does not represent a full month of service purchased. Installment payments of employees on military leave or sick leave without pay shall be suspended during the period of leave and shall resume without recalculation upon the employee's return from leave.
  - (g) If payments have ceased under paragraph (e) or (f) of this subsection and the member later becomes a participating employee in one (1) of the three (3) systems administered by Kentucky Retirement Systems, the employee may complete the adjusted original installment purchase by lump sum or installment payments. If the employee elects to renew the installment purchase, the cost of the remaining service shall be recalculated in accordance with paragraph (a) of this subsection. ~~If the original installment purchase was for multiple service purchases, the employee may not separate those purchases under a new installment purchase.~~
- (17) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may purchase service credit under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852 by transferring funds through a direct trustee-to-trustee transfer as permitted under the applicable sections of the Internal Revenue Code and any regulations or rulings issued thereunder, or through a direct rollover as contemplated by and permitted under 26 U.S.C. sec. 401(a)(31) and any regulations or rulings issued thereunder. Service credit may also be purchased by a rollover of funds pursuant to and permitted under the rules specified in 26 U.S.C. sec. 402(c) and 26 U.S.C. sec. 408(d)(3). The Kentucky Retirement Systems shall accept the transfer or rollover to the extent permitted under the rules specified in the applicable provisions of the Internal Revenue Code and any regulations and rulings issued thereunder. The amount shall be credited to the individual member's contribution account in the appropriate retirement system and shall be considered accumulated contributions of the member.
- (18) After August 1, 1998, any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who is age sixty-five (65) or older and has forty-eight (48) months of service credit or, if younger, who has sixty (60) months of service credit in systems administered by Kentucky Retirement Systems may purchase credit in the system in which the employee has the service credit for up to ten (10) years service in a regular full-time position that was credited to a state or local government-

administered public defined benefit plan in another state other than a defined benefit plan for teachers. The employee shall pay a delayed contribution payment. Payment may be by lump sum, or the employee may pay by increments. The employee may transfer funds directly from the other state's plan if eligible to the extent permitted under subsection (17) of this section and to the extent permitted by the other state's laws and shall provide proof that he is not eligible for a retirement benefit for the period of service from the other state's plan.

- (19) After August 1, 1998, any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has sixty (60) or more months of service in the State Police Retirement System or in a hazardous position in the Kentucky Employees Retirement System or the County Employees Retirement System, may purchase credit in the system in which the employee has the sixty (60) months of service credit for up to ten (10) years of service in a regular full-time position that was credited to a defined benefit retirement plan administered by a state or local government in another state, if the service could be certified as hazardous pursuant to KRS 61.592. The employee shall pay a delayed contribution payment. Payment may be by lump sum or by increments. The employee may transfer funds directly from the other unit of government's plan if eligible to the extent permitted under subsection (17) of this section and to the extent permitted by the other state's laws, and the employee shall provide proof that he is not eligible for a retirement benefit for the period of service from the other unit of government's plan.
- (20) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems and who has completed service as a volunteer in the Kentucky Peace Corps, created by KRS 154.01-720, may purchase service credit for the time served in the corps by making delayed contribution payments.
- (21) An employee participating in any retirement system administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65), or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems, and who was formerly employed in a regional community mental health and mental retardation services program, organized and operated under the provisions of KRS 210.370 to 210.480, which does not participate in a state-administered retirement system may obtain credit for the period of his service in the regional community mental health and mental retardation program, by paying to the state retirement system in which he participates a delayed contribution payment. Payment to one (1) of the retirement systems administered by the Kentucky Retirement Systems may be made by lump sum or in increments.
- (22) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, who was employed by a vocational technical school in a noncertified part-time position averaging eighty (80) or more hours per month, determined by using the number of months actually worked within a calendar or fiscal year, may purchase service credit in the Kentucky Employees Retirement System. The cost of the service shall be a delayed contribution payment, which shall not be picked up by the employer as described in KRS 61.560(4).
- (23)
  - (a) Any person who is entitled to service credit for employment which was not reported in accordance with KRS 16.543, 61.543, or 78.615 may obtain credit for the service by paying the employee contributions due within six (6) months of notification by the system. No interest shall be added to the contributions. The service credit shall not be credited to the member's account until the employer contributions are received. If a retired member makes the payment within six (6) months, the retired member's retirement allowance shall be adjusted to reflect the added service after the employer contributions are received by the retirement system.
  - (b) Any employee participating in one (1) of the state-administered retirement systems who is entitled to service credit under paragraph (a) of this subsection and who has not repaid the employee contributions due within six (6) months of notification by the system may regain the credit after the six (6) months by paying to the system the employee contributions plus interest at the actuarially assumed rate from the date of initial notification under paragraph (a) of this subsection. Service credit shall not be credited to the member's account until the employer contributions are received by the retirement system. The payments shall not be picked up, as described in KRS 61.560(4), by the employer.
  - (c) Service purchased under this subsection by employees who begin participating on or after September 1, 2008, shall be considered service credited under KRS 16.543(1), 61.543(1), or 78.615(1) for purposes

of determining eligibility for retirement benefits under KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852.

- (24) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems may purchase service credit for employment with a public agency that would have been eligible to participate under KRS 61.520 but which did not participate in the Kentucky Employees Retirement System or a political subdivision that would have been eligible to participate under KRS 78.530 but which did not participate in the County Employees Retirement System if the former public agency or political subdivision has merged with or been taken over by a participating department or county. The cost of the service shall be determined as a delayed contribution payment for the respective retirement system. Payment may be made by lump sum or in increments. The payment shall not be picked up, as described in KRS 61.560(4) or 78.610(4), by the employer.
- (25) Any employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems prior to July 15, 2002, who has accrued at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems and who has total service in all state-administered retirement systems of at least one hundred eighty (180) months of service credit may purchase a combined maximum total of five (5) years of retirement service credit which is not otherwise purchasable under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. The purchase price for the retirement service credit shall be calculated and paid for as a delayed contribution payment. The payment shall not be picked up, as described in KRS 16.545(4), 61.560(4), or 78.610(4), by the employer, and the employee's payment shall be paid into the individual member's contribution account in the appropriate retirement system and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by increments. The service purchased under this subsection shall not be used in determining a retirement allowance until the member has accrued at least two hundred forty (240) months of service, excluding service purchased under this subsection. If the member does not accrue at least two hundred forty (240) months of service, excluding service purchased under this subsection, upon retirement, death, or written request following termination, the payment, plus interest as provided in KRS 61.575, shall be refunded.
- (26) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65), or at least sixty (60) months of service if under age sixty-five (65), in the systems administered by Kentucky Retirement Systems, may obtain credit in the County Employees Retirement System for the period of that employee's service with a community action agency created under KRS 273.405 to 273.453 if that service was not covered by a state-administered retirement system. The member shall pay to the retirement system a delayed contribution payment. Payment may be made by lump sum or in increments. The payment shall not be picked up, as described in KRS 61.560(4) or 78.610(4), by the employer.
- (27) ~~[Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the retirement systems administered by the Kentucky Retirement Systems may obtain current service credit for up to forty-eight (48) months for his or her period of service as a Domestic Relations Commissioner by paying to the retirement system a delayed contribution payment no later than December 31, 2002. Payment may be made by lump sum or under an installment agreement. The payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.~~
- ~~(28)~~—]The board of trustees is authorized to establish a program, subject to a favorable ruling from the Internal Revenue Service, to provide for the purchase of service credit under any of the provisions of KRS 16.505 to 16.552, 61.510 to 61.705, and 78.510 to 78.852, pursuant to the employer pick-up provisions in 26 U.S.C. sec. 414(h)(2).
- ~~(28)~~~~[(29)]~~ An employee may obtain credit for regular full-time service with an agency prior to August 1, 1998, for which the employee did not receive credit due to KRS 61.637(1), by paying a delayed contribution. The payment shall not be picked up by the employer, except as provided in subsection ~~(27)~~~~[(28)]~~ of this section, and shall be credited to the employee's second retirement account. Service credit obtained under this subsection shall not be used in determining benefits under KRS 61.702. The employee may purchase credit for service prior to August 1, 1998, if:

- (a) The employee retired from one (1) of the retirement systems administered by the Kentucky Retirement Systems and was reemployed prior to August 1, 1998, earning less than the maximum permissible earnings under the Federal Social Security Act;
  - (b) The employee elected to participate in a second retirement account effective August 1, 1998, in accordance with KRS 61.637(7); and
  - (c) The employee has at least forty-eight (48) months of service if age sixty-five (65), or at least sixty (60) months of service if under age sixty-five (65), in a second account in the systems administered by Kentucky Retirement Systems.
- ~~(29)~~~~(30)~~ An employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, may obtain credit for the service in a regular full-time position otherwise creditable under the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System for service in the United States government, other than service in the Armed Forces, for which service is not otherwise given, by paying to the system a delayed contribution payment. Payment may be made by lump sum or in increments. No payment made pursuant to this section shall be picked up by the employer, as described in KRS 61.560(4).
- ~~(30)~~~~(31)~~ An employee participating in a hazardous position in one (1) of the retirement systems administered by the Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, may obtain credit for service in a regular full-time position in an urban-county government that would qualify for hazardous duty coverage under KRS 61.592 by paying to the system a delayed contribution payment. Payment may be made by lump sum or in increments. No payment made pursuant to this section shall be picked up by the employer, as described in KRS 61.560(4).

➔Section 11. KRS 61.565 is amended to read as follows:

- (1) Each employer participating in the State Police Retirement System as provided for in KRS 16.505 to 16.652, each employer participating in the County Employees Retirement System as provided for in KRS 78.510 to 78.852, and each employer participating in the Kentucky Employees Retirement System as provided for in KRS 61.510 to 61.705 shall contribute annually to the respective retirement system an amount equal to the percent, as computed under subsection (2) of this section, of the creditable compensation of its employees to be known as the "normal contributions," and an additional amount to be known as the "**actuarially accrued liability**~~[past service]~~ contribution" which shall be computed by amortizing the total unfunded **actuarially accrued**~~[past service]~~ liability over a period of thirty (30) years using the level-percentage-of-payroll **amortization** method. This method shall be used beginning with the ~~2007~~~~1990~~ actuarial valuation. The initial thirty (30) year amortization period shall begin with the ~~2007~~~~1990~~ valuation. Any significant increase in **the actuarially accrued**~~[past service]~~ liability due to benefit improvements after the ~~2007~~~~1990~~ valuation shall be amortized using the level-percentage-of-payroll amortization method over a separate thirty (30) year period commencing in the year of the actuarial valuation in which the benefit improvements are first reflected.
- (2) The normal contribution rate shall be determined by the entry age normal cost funding method. The **actuarially accrued**~~[past service]~~ liability shall be determined by actuarial method consistent with the methods prescribed for determining the normal contribution rate. Normal contributions and the **actuarially accrued**~~[past service]~~ liability contribution shall be determined on actuarial bases adopted by the board.
- (3) Normal contribution and the **actuarially accrued liability**~~[past service]~~ contribution rates shall be determined by the board on the basis of the annual actuarial valuation last preceding the July 1 of a new biennium. The board may amend contribution rates as of July 1 of the second year of a biennium, if it is determined on the basis of a subsequent actuarial valuation that amended contribution rates are necessary to satisfy the requirements of subsections (1) and (2) of this section.
- (4) The system shall advise each employer prior to the beginning of each biennium, or prior to July 1 of the second year of a biennium, of any change in the employer contribution rate. Based on the employer contribution rate, each employer shall include in the budget sufficient funds to pay the employer contributions as determined by the board under subsections (1) to (3) of this section.
- (5) (a) It is the intent of the General Assembly to begin phasing into the full actuarially required contribution rates for the Kentucky Employees Retirement System and the State Police Retirement System.

- (b) For the employer contribution rate for the Kentucky Employees Retirement System pertaining to nonhazardous employees, it is the intent of the General Assembly to work towards the goal of contributing the actuarially required employer contribution as follows:
1. Forty-four percent (44%) of the actuarially required contribution for the fiscal year beginning July 1, 2010;
  2. Forty-eight percent (48%) of the actuarially required contribution for the fiscal year beginning July 1, 2011;
  3. Fifty-three percent (53%) of the actuarially required contribution for the fiscal year beginning July 1, 2012;
  4. Fifty-seven percent (57%) of the actuarially required contribution for the fiscal year beginning July 1, 2013;
  5. Sixty-one percent (61%) of the actuarially required contribution for the fiscal year beginning July 1, 2014;
  6. Sixty-five percent (65%) of the actuarially required contribution for the fiscal year beginning July 1, 2015;
  7. Sixty-nine percent (69%) of the actuarially required contribution for the fiscal year beginning July 1, 2016;
  8. Seventy-three percent (73%) of the actuarially required contribution for the fiscal year beginning July 1, 2017;
  9. Seventy-seven percent (77%) of the actuarially required contribution for the fiscal year beginning July 1, 2018;
  10. Eighty-one percent (81%) of the actuarially required contribution for the fiscal year beginning July 1, 2019;
  11. Eighty-five percent (85%) of the actuarially required contribution for the fiscal year beginning July 1, 2020;
  12. Eighty-nine percent (89%) of the actuarially required contribution for the fiscal year beginning July 1, 2021;
  13. Ninety-three percent (93%) of the actuarially required contribution for the fiscal year beginning July 1, 2022;
  14. Ninety-seven percent (97%) of the actuarially required contribution for the fiscal year beginning July 1, 2023; and
  15. One hundred percent (100%) of the actuarially required contribution for the fiscal year beginning July 1, 2024.
- (c) For the employer contribution rate for the Kentucky Employees Retirement System pertaining to hazardous employees, it is the intent of the General Assembly to work towards the goal of contributing the full actuarially required employer contribution as follows:
1. Seventy-six percent (76%) of the actuarially required contribution for the fiscal year beginning July 1, 2010;
  2. Seventy-nine percent (79%) of the actuarially required contribution for the fiscal year beginning July 1, 2011;
  3. Eighty-three percent (83%) of the actuarially required contribution for the fiscal year beginning July 1, 2012;
  4. Eighty-six percent (86%) of the actuarially required contribution for the fiscal year beginning July 1, 2013;
  5. Eighty-nine percent (89%) of the actuarially required contribution for the fiscal year beginning July 1, 2014;

6. Ninety-two percent (92%) of the actuarially required contribution for the fiscal year beginning July 1, 2015;
  7. Ninety-five percent (95%) of the actuarially required contribution for the fiscal year beginning July 1, 2016;
  8. Ninety-eight percent (98%) of the actuarially required contribution for the fiscal year beginning July 1, 2017; and
  9. One hundred percent (100%) of the actuarially required contribution for the fiscal year beginning July 1, 2018.
- (d) For the employer contribution rate for the State Police Retirement System, it is the intent of the General Assembly to work towards the goal of contributing the full actuarially required employer contribution as follows:
1. Sixty percent (60%) of the actuarially required contribution for the fiscal year beginning July 1, 2010;
  2. Sixty-five percent (65%) of the actuarially required contribution for the fiscal year beginning July 1, 2011;
  3. Seventy percent (70%) of the actuarially required contribution for the fiscal year beginning July 1, 2012;
  4. Seventy-five percent (75%) of the actuarially required contribution for the fiscal year beginning July 1, 2013;
  5. Eighty percent (80%) of the actuarially required contribution for the fiscal year beginning July 1, 2014;
  6. Eighty-five percent (85%) of the actuarially required contribution for the fiscal year beginning July 1, 2015;
  7. Ninety percent (90%) of the actuarially required contribution for the fiscal year beginning July 1, 2016;
  8. Ninety-five percent (95%) of the actuarially required contribution for the fiscal year beginning July 1, 2017;
  9. Ninety-eight percent (98%) of the actuarially required contribution for the fiscal year beginning July 1, 2018; and
  10. One hundred percent (100%) of the actuarially required contribution for the fiscal year beginning July 1, 2019.

➔Section 12. KRS 61.570 is amended to read as follows:

All of the assets of the system shall be held and invested in the Kentucky employees retirement fund and credited, according to the purpose for which they are held, to one (1) of **three (3)** ~~two (2)~~ accounts, namely, the members' contribution account, ~~and~~ the retirement allowance account, **and accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, as prescribed by subsection (2)(b) of Section 22 of this Act.**

➔Section 13. KRS 61.575 is amended to read as follows:

- (1) The members' contribution account shall be the account to which all members' contributions, or contributions picked up by the employer after August 1, 1982, and interest allowances as provided in KRS 61.510 to 61.692 shall be credited, **except as provided by subsection (2)(b) of Section 22 of this Act.** From this account shall be paid the accumulated contributions of a member required to be returned to him upon withdrawal, or paid in the event of his death before retirement. Prior to the member's retirement, death, or refund in accordance with KRS 61.625, no funds shall be made available from the member contribution account.
- (2) Each member's contribution or contribution picked up by the employer shall be credited to the individual account of the contributing member, **except as provided by subsection (2)(b) of Section 22 of this Act.**
- (3) (a) Each member on June 30 of each year shall have his individual account credited with interest.

- (b) For a member who begins participating before September 1, 2008, interest shall be credited to his individual account at a rate determined by the board but not less than two percent (2%) per annum on the accumulated contributions of the member on June 30 of the preceding fiscal year.
  - (c) For a member who begins participating on or after September 1, 2008, interest shall be credited to his individual account at a rate of two and one-half percent (2.5%) per annum on the accumulated contributions of the member on June 30 of the preceding fiscal year.
  - (d) The amounts of interest credited to a member's account under this subsection shall be transferred from the retirement allowance account.
- (4) Upon the retirement of a member, his accumulated contributions shall be transferred from the members' contribution account to the retirement allowance account.

➔Section 14. KRS 61.590 is amended to read as follows:

- (1) A member or beneficiary eligible to receive retirement benefits under any of the provisions of KRS 61.510 to 61.705, 78.510 to 78.852, and 16.510 to 16.652 shall have on file at the retirement office on the form prescribed by the board, notification of retirement, giving his name, address, Social Security number, last day of employment, and other information the system may require. The **form entitled "Notification of Retirement"** shall not be filed more than six (6) months before the member's effective retirement date.
- (2) Within ten (10) days of the receipt of the ~~notification of retirement~~ form **entitled "Notification of Retirement"** submitted within two (2) months of the effective date of retirement, the system shall cause to be prepared an estimate of the amounts the member or beneficiary may expect to receive under the various plans available to the member or beneficiary. This information shall be recorded on a form entitled "Estimated Retirement Allowance" and forwarded to the member or beneficiary. If the member submits a ~~notification of retirement~~ form **entitled "Notification of Retirement"** more than two (2) months prior to the effective retirement date, the system shall provide the **form entitled "Estimated Retirement Allowance"** ~~estimated retirement allowance~~ within forty-five (45) days of the member's effective retirement date.
- (3) The member or beneficiary shall file at the retirement office the form entitled "Estimated Retirement Allowance" after he has checked the **payment option** ~~plan~~ of his choice, signed the document and had his signature witnessed. A member or beneficiary may not select a different **payment option** ~~plan~~ after the first retirement allowance payment has been issued by the State Treasurer.
- (4) A member or beneficiary choosing a monthly payment **option** ~~plan~~ shall have on file at the retirement office his birth certificate or other acceptable evidence of date of birth. If a survivorship **option** ~~plan~~ is chosen, proof of dates of birth of the beneficiary and member shall be on file at the retirement office.
- (5)
  - (a) The effective date of normal retirement shall be the first month following the month in which employment was terminated from a regular full-time position.
  - (b) The effective date of disability retirement shall be the first month following the month in which the member's last day of paid employment in a regular full-time position occurred, **provided the member files the form entitled "Estimated Retirement Allowance" no later than six (6) months following the date the notification of approval for disability retirement benefits is mailed. If the member fails to file the form entitled "Estimated Retirement Allowance" within six (6) months of the date the notification of approval for disability retirement benefits is mailed, then the member's form entitled "Notification of Retirement" shall be void. The member shall be required to submit a new form entitled "Notification of Retirement" to apply for disability retirement and reestablish eligibility for disability retirement benefits.**
  - (c) The effective date of early retirement shall be the first month following the month the **form entitled "Notification of Retirement"** ~~form~~ is filed at the retirement office or a future month designated by the member, if employment in a regular full-time position has been terminated and if the member files the **form entitled "Estimated Retirement Allowance Form"** no later than six (6) months following termination. **If the member fails to file the form entitled "Estimated Retirement Allowance" within six (6) months following the effective retirement date of the member, then the member's form entitled "Notification of Retirement" shall be void and the member shall be required to submit a new form entitled "Notification of Retirement" to apply for early retirement.**

- (6) The effective date of a deferred retirement option as provided under KRS 16.576(5) shall be the month following age sixty-five (65), or the month following written notification from the member that he wishes to begin receiving retirement payments. In the event of the death of a member who has deferred his retirement allowance, the effective date of retirement shall be the month following the member's death.
- (7) Notwithstanding the provisions of KRS 16.578 or 61.640, the effective date of a beneficiary's retirement allowance under normal, early, or disability retirement shall be as prescribed in subsection (5) or (6) of this section if the member dies before the first retirement allowance has been issued by the State Treasurer and his beneficiary becomes eligible for payments under KRS 16.578 or 61.640.

➔Section 15. KRS 61.615 is amended to read as follows:

- (1) If the board's medical examiner determines that a recipient of a disability retirement allowance is, prior to his normal retirement date, employed in a position with the same or similar duties, or in a position with duties requiring greater residual functional capacity and physical exertion, as the position from which he was disabled, except where the recipient has returned to work on a trial basis not to exceed nine (9) months, the system may reduce or discontinue the retirement allowance. Each recipient of a disability retirement allowance who is engaged in gainful employment shall notify the system of any employment; otherwise, the system shall have the right to recover payments of a disability retirement allowance made during the employment.
- (2) If the board's medical examiner determines that a recipient of a disability retirement allowance is, prior to his normal retirement date, no longer incapacitated by the bodily injury, mental illness, or disease for which he receives a disability retirement allowance, the board may reduce or discontinue the retirement allowance.
- (3) The system shall have full power and exclusive authority to reduce or discontinue a disability retirement allowance and the system shall utilize the services of a medical examiner as provided in KRS 61.665, in determining whether to continue, reduce, or discontinue a disability retirement allowance under this section.
  - (a) The system shall select a medical examiner to evaluate the forms and medical information submitted by the person. If there is objective medical evidence of a mental impairment, the medical examiner may request the board's licensed mental health professional to assist in determining the level of the mental impairment.
  - (b) The medical examiners shall be paid a reasonable amount by the retirement system for each case evaluated.
  - (c) The medical examiner shall recommend that disability retirement allowance be continued, reduced, or discontinued.
    1. If the medical examiner recommends that the disability retirement allowance be continued, the system shall make retirement payments in accordance with the retirement plan selected by the person.
    2. If the medical examiner recommends that the disability retirement allowance be reduced or discontinued, the system shall send notice of the recommendation by United States first-class mail to the person's last address on file in the retirement office.
      - a. The person shall have sixty (60) days from the day that the system mailed the notice to file at the retirement office additional supporting employment or medical information and certify to the retirement office that the forms and additional supporting employment information or medical information are ready to be evaluated by the medical examiner or to appeal the recommendation of the medical examiner to reduce or discontinue the disability retirement allowance by filing at the retirement office a request for a formal hearing.
      - b. If the person fails or refuses to file at the retirement office the forms, the additional supporting employment information, and current medical information or to appeal the recommendation of the medical examiners to reduce or discontinue the disability retirement allowance, his retirement allowance shall be discontinued on the first day of the month following the expiration of the period of the sixty (60) days from the day the system mailed the notice of the recommendation to the person's last address on file in the retirement office.

- (d) The medical examiner shall make a recommendation based upon the evaluation of additional supporting medical information submitted in accordance with paragraph (c)2.a. of this subsection.
    - 1. If the medical examiner recommends that the disability retirement allowance be continued, the system shall make disability retirement payments in accordance with the retirement plan selected by the person.
    - 2. If the medical examiner recommends that the disability retirement allowance be reduced or discontinued based upon the evaluation of additional supporting medical information, the system shall send notice of this recommendation by United States first-class mail to the person's last address on file in the retirement office.
      - a. The person shall have sixty (60) days from the day that the system mailed the notice of the recommendation to appeal the recommendation to reduce or discontinue the disability retirement allowance by filing at the retirement office a request for formal hearing.
      - b. If the person fails or refuses to appeal the recommendation of the medical examiners to reduce or discontinue the disability retirement allowance, his retirement allowance shall be discontinued on the first day of the month following the expiration of the period of the sixty (60) days from the day the system mailed the notice of the recommendation to the person's last address on file in the retirement office.
  - (e) Any person whose disability benefits have been reduced or discontinued, pursuant to paragraph (c)2. or (d)2. of this subsection, may file at the retirement office a request for formal hearing to be conducted in accordance with KRS Chapter 13B. The right to demand a formal hearing shall be limited to a period of sixty (60) days after the person had notice, as described in paragraph (c) or (d) of this subsection. The request for formal hearing shall be filed with the system, at the retirement office in Frankfort. The request for formal hearing shall include a short and plain statement of the reasons the reduction, discontinuance, or denial of disability retirement is being contested.
  - (f) Failure of the person to request a formal hearing within the period of time specified shall preclude the person from proceeding any further with contesting the reduction or discontinuation of disability retirement allowance, except as provided in subsection (6)(d) of this section. This paragraph shall not limit the person's right to appeal to a court.
  - (g) A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based. If the board orders that the person's disability retirement allowance be discontinued or reduced, the order shall take effect on the first day of the month following the day the system mailed the order to the person's last address on file in the retirement office. Judicial review of the final board order shall not operate as a stay and the system shall discontinue or reduce the person's disability retirement allowance as provided in this section.
  - (h) Notwithstanding any other provisions of this section, the system may require the person to submit to one (1) or more medical or psychological examinations at any time. The system shall be responsible for any costs associated with any examinations of the person requested by the medical examiner or the system for the purpose of providing medical information deemed necessary by the medical examiner or the system. Notice of the time and place of the examination shall be mailed to the person or his legal representative. If the person fails or refuses to submit to one (1) or more medical examinations, his rights to further disability retirement allowance shall cease.
  - (i) All requests for a hearing pursuant to this section shall be made in writing.
- (4) The board may establish an appeals committee whose members shall be appointed by the chair and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board.
  - (5) Any person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing a petition for judicial review in the Franklin Circuit Court in accordance with KRS Chapter 13B.
  - (6) If a disability retirement allowance is reduced or discontinued, the person may apply for early retirement benefits as provided under KRS 61.559, subject to the following provisions:

- (a) The person may not change his beneficiary or payment option;
  - (b) If the person has returned to employment with an employer participating in *one (1) of the systems administered by Kentucky Retirement Systems*~~[the system from which he retired]~~, the service and creditable compensation shall be used in recomputing his benefit, except that the person's final compensation shall not be less than the final compensation last used in determining his retirement allowance;
  - (c) The benefit shall be reduced as provided by KRS 61.595(2);
  - (d) The person shall remain eligible for reinstatement of his disability allowance upon reevaluation by the medical review board until his normal retirement age. The person shall apply for reinstatement of disability benefits in accordance with the provisions of this section. ***An application for reinstatement of disability benefits shall be administered as an application under KRS 61.600, and only the bodily injuries, mental illnesses, diseases, or conditions for which the person was originally approved for disability benefits shall be considered. Bodily injuries, mental illnesses, diseases, or conditions that came into existence after the person's last day of paid employment shall not be considered as a basis for reinstatement of disability benefits. Bodily injuries, mental illnesses, diseases, or conditions alleged by the person as being incapacitating, but which were not the basis for the award of disability retirement benefits, shall not be considered.*** If the person establishes that the disability benefits should be reinstated, the retirement system shall pay disability benefits effective from the first day of the month following the month in which the person applied for reinstatement of the disability benefits; and
  - (e) Upon attaining normal retirement age, the person shall receive the higher of either his disability retirement allowance or his early retirement allowance.
- (7) No disability retirement allowance shall be reduced or discontinued by the system after the person's normal retirement date except in case of reemployment as provided for by KRS 61.637. If a disability retirement allowance has been reduced or discontinued, except if the person is reemployed as provided for by KRS 61.637, the retirement allowance shall be reinstated upon attainment of the person's normal retirement ~~date~~~~[age]~~ to the retirement allowance prior to adjustment. No reinstated payment shall be less than the person is receiving upon attainment of the person's normal retirement ~~date~~~~[age]~~.

➔Section 16. KRS 61.623 is amended to read as follows:

- (1) A recipient who begins receiving a retirement allowance August 1, 2000, or after, from the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System shall have the retirement allowance paid by electronic fund transfer to a financial institution designated by the recipient except as provided by subsection (5) of this section.
- (2) When an individual becomes eligible to receive a monthly retirement allowance, the retirement system shall provide an authorization for deposit of retirement payment form to the recipient to have the monthly retirement allowance deposited to an account in a financial institution.
- (3) The recipient~~[and the financial institution]~~ shall provide the information and ***authorization***~~[authorizations]~~ required for the electronic transfer of funds from the State Treasurer's office to the designated financial institution.
- (4) At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new authorization for deposit of retirement payment form and filing the form at the retirement office in Frankfort. The last authorization for deposit of retirement payment on file at the retirement office shall control the electronic transfer of the recipient's retirement allowance.
- (5)
  - (a) A recipient may request to be paid by check issued by the State Treasurer instead of by electronic transfer by completing and filing at the retirement office a request for payment by check form.
  - (b) The request shall be approved if:
    - 1. The recipient certifies that he does not currently have an account with a financial institution; ***or***
    - 2. The recipient's bank certifies that it does not participate in the electronic funds transfer program;~~{~~  
~~or~~
    - 3. ~~The recipient is age seventy (70) or older as of July 15, 2008, and the recipient files at the retirement office on or before December 31, 2008, a request for payment by check form with a~~

~~written explanation of why the requirement to receive payment by electronic fund transfer presents a hardship or is not in his or her best financial interest].~~

- (c) The retirement office shall, every five (5) years, require the recipient to certify that the original conditions under which he requested payment by check continue. If the original conditions do not exist, the recipient shall complete an authorization for direct deposit of retirement payment form and file it with the retirement office.

➔Section 17. KRS 61.630 is amended to read as follows:

- (1) If a retired member who did not elect an optional retirement plan dies at any time after retirement but before receiving total retirement allowances provided in KRS 16.510 to 16.652, KRS 61.515 to 61.705, and KRS 78.520 to 78.852 at least equal to his accumulated contributions as of the date of his retirement, the difference between the accumulated contributions and the total allowances shall be payable in a lump sum to the properly designated beneficiary. If a living person designated as the beneficiary predeceases the retired member, the estate shall become the beneficiary. If a spouse designated as the beneficiary is divorced from the retired member as of the member's death, the estate shall become the beneficiary.
- (2) If a retired member who elected an optional retirement plan and his beneficiary both die at any time after retirement of the member but before receiving total retirement allowances provided in KRS 16.510 to 16.652, KRS 61.515 to 61.705, and KRS 78.520 to 78.852 at least equal to the retired member's accumulated contributions as of the date of his retirement, the difference between the accumulated contributions and the total allowances shall be payable in a lump sum to the estate of the last deceased, except that the retired member's estate shall receive the payment if the beneficiary was the spouse and they were divorced as of the date of the member's death. If the retired member and beneficiary die simultaneously, the estate of the retired member shall become the beneficiary.
- (3) If a beneficiary receiving a lifetime retirement allowance under KRS 16.578 or 61.640 dies before receiving total retirement allowances provided in KRS 16.510 to 16.652, KRS 61.515 to 61.705, and KRS 78.520 to 78.852 at least equal to the member's accumulated contributions as of the date of the member's death, the difference between the accumulated contributions and the total allowances shall be payable in a lump sum to the estate of the beneficiary.
- (4) If a beneficiary receiving a retirement allowance for *sixty (60) or* one hundred twenty (120) months certain under KRS 16.576, 16.578, or 61.640, or a beneficiary receiving a retirement allowance under KRS 61.635(5), (6), or (7), dies before receiving all payments under the plan, the executor or administrator of his estate shall receive a lump sum payment which shall be the actuarial equivalent to the remaining payments.
- (5) If the system is unable to verify a recipient's whereabouts or whether the recipient is living, the system shall suspend the recipient's retirement allowance. If the recipient is located, the system shall restore to the recipient all suspended retirement allowances.

➔Section 18. KRS 61.640 is amended to read as follows:

- (1) *If a member dies prior to retirement or before the first benefit payment has been issued by the State Treasurer, the member's beneficiary shall be eligible for the benefits provided by this section if the member had on file a written designation of a beneficiary with the retirement office and the member met the following conditions at the date of his or her death:*
  - (a) *The member was eligible to retire under KRS 61.559(2) or (3);*
  - (b) *The member was in active employment or on authorized leave of absence with five (5) or more years of service credit and died prior to his or her normal retirement date or was normal retirement age or older and had at least four (4) years of service credit; or*
  - (c) *The member was not in active employment or on authorized leave of absence with twelve (12) or more years of service credit and died prior to his or her normal retirement date.*
- (2) *If the beneficiary eligible for benefits as provided in subsection (1) of this section is a single person, then the beneficiary may elect to receive:*
  - (a) *A monthly benefit payable for the life of the beneficiary that is equal to the benefit that would have been paid had the member retired immediately prior to his or her date of death and elected to receive*

*benefits payable under the survivorship one hundred percent (100%) option as provided in KRS 61.635(2);*

- (b) *A monthly benefit payable for the life of the beneficiary under the beneficiary Social Security adjustment option as provided in KRS 61.635(9) that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;*
  - (c) *A monthly benefit payable for a period of sixty (60) months that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;*
  - (d) *A monthly benefit payable for a period of one hundred twenty (120) months that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;*
  - (e) *A monthly benefit payable for a period of one hundred twenty (120) months that is equivalent to the benefit the member would have been entitled to receive based on his or her years of service and final compensation at the date of his or her death reduced by the survivorship fifty percent (50%) factor as provided for in KRS 61.635(4), then reduced by fifty percent (50%), and that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection; or*
  - (f) *The higher of a refund of accumulated contributions and interest as described in KRS 61.625(1) or one (1) time lump-sum payment which shall be the actuarial equivalent of the amount payable under paragraph (a) of this subsection for a period of sixty (60) months.*
- (3) *If the beneficiary eligible for benefits as provided by subsection (1) of this section are multiple beneficiaries or a trust, then the multiple beneficiaries by consensus or the trustee may elect to receive the actuarial equivalent amounts payable under paragraph (c), (d), (e), or (f) of subsection (2) of this section using the assumption that the beneficiary's age is the same as the member's age.*
- (4) *If the beneficiary eligible for benefits as provided in subsection (1) of this section is the member's estate, then the beneficiary shall receive the higher of a refund of accumulated contributions and interest as described in KRS 61.625(1) or the one (1) time lump-sum payment payable under paragraph (f) of subsection (2) of this section, using the assumption that the beneficiary's age is the same as the member's age. [If an employee who is of normal retirement age or greater is in the active employment of a participating agency, or on official leave from the agency, if the leave has been granted in accordance with the policy of the state Personnel Cabinet, with service credit of forty eight (48) months or more, at least twelve (12) of which are current service, or if an employee of less than normal retirement age is in the active employment of a participating agency or on official leave from the agency, if the leave has been granted in accordance with the policy of the state Personnel Cabinet, with service credit of sixty (60) months, at least twelve (12) of which are current service, dies at any time before the first retirement allowance payment has been issued by the State Treasurer and has on file at the retirement office at the time of his death a written designation of a beneficiary, the beneficiary may elect to receive an annual benefit payable monthly commencing in the month following the member's death which shall be equivalent to the benefit the member would have been entitled to receive, based on his age, years of service, and final compensation at date of his death, had the member been eligible for retirement and had he chosen benefits payable under KRS 61.635(2); or the beneficiary may elect the actuarial equivalent payable for sixty (60) months certain; or the beneficiary may elect the actuarial equivalent payable for one hundred twenty (120) months certain; or the beneficiary may elect the actuarial equivalent refund.*
- ~~(2) If a member not in the active employment of a participating agency, nor on official leave from the agency, with the service and age prescribed in KRS 61.559(2), dies before the first retirement allowance payment has been issued by the State Treasurer and has on file in the retirement office at the time of his death a written designation of a beneficiary, the beneficiary may elect to receive an annual benefit payable monthly commencing in the month following the member's death which shall be equivalent to the benefit the member would have been entitled to receive, based on his age, years of service, and final compensation at date of his death, had he chosen benefits payable under KRS 61.635(2); or the beneficiary may elect the actuarial equivalent payable for sixty (60) months certain; or the beneficiary may elect the actuarial equivalent payable for one hundred twenty (120) months certain; or the beneficiary may elect the actuarial equivalent refund.~~
- ~~(3) If a member, not in the active employment of a participating agency nor on official leave from the agency, with twelve (12) or more years of service credit at least one (1) of which is current service, dies at any time before the first retirement allowance payment has been issued by the State Treasurer and has on file in the retirement office at the time of his death a written designation of a beneficiary, the beneficiary may elect to receive an annual benefit payable monthly commencing in the month following the member's death which shall be~~

equivalent to the benefit the member would have been entitled to receive, based on his age, years of service, and final compensation at date of his death, had the member been eligible for retirement and had he chosen benefits payable under KRS 61.635(2); or the beneficiary may elect the actuarial equivalent payable for sixty (60) months certain; or the beneficiary may elect the actuarial equivalent payable for one hundred twenty (120) months certain; or the beneficiary may elect the actuarial equivalent refund.

- (4) ~~An alternative calculation of benefits payable to the beneficiary under subsection (1), (2), or (3) of this section shall be determined by computing an annual benefit payable commencing in the month following the member's death which shall be equivalent to the benefit the member would have been entitled to receive based on his years of service and final compensation at the date of his death reduced by the survivorship fifty percent (50%) factor as provided for in KRS 61.635(4) then reduced by fifty percent (50%), and the actuarial equivalent payable for sixty (60) months certain and one hundred twenty (120) months certain and the actuarial equivalent refund shall be determined.~~
- (5) ~~If the member, subject to subsection (1), (2), (3), or (4) of this section, had on file in the retirement office a written designation of multiple beneficiaries, his estate, trust, or trustee, the multiple beneficiaries by consensus, the administrator, or executor of the estate, or trustee may elect to receive the actuarial equivalent to the benefit allowable under subsections (1), (2), (3), or (4) of this section given the assumptions that the beneficiary's age is the same as the member's, and that the member had chosen benefits payable monthly for sixty (60) months certain, or one hundred and twenty (120) months certain, or an actuarial equivalent refund.~~
- (6) ~~Actuarial equivalent refund. The beneficiary may elect to receive a one (1) time lump sum payment which shall be the actuarial equivalent to the amount payable under KRS 61.635(2) for a period of sixty (60) months. In the case of designation of multiple beneficiaries, an estate, trust, or trustee, the multiple beneficiaries by consensus, trustee, executor, or administrator of the estate may elect to receive a one (1) time lump sum payment which shall be the actuarial equivalent of the amount payable under KRS 61.635(2), assuming the beneficiary's age to be the same as the member's for a period of sixty (60) months.~~
- (7) ~~In the case of a single beneficiary, who is a person, the highest monthly benefit determined under subsection (1), (2), (3), (4), or (6) of this section for a life annuity or for payments for sixty (60) months certain or for payments for one hundred twenty (120) months certain or for the actuarial equivalent refund or for the Social Security adjustment option shall be tendered to the beneficiary. In the case of designation of multiple beneficiaries, an estate, trust, or trustee, the highest monthly benefit determined under subsection (1), (2), (3), (4), (5), or (6) of this section for payments for sixty (60) months certain or one hundred and twenty (120) months certain or the actuarial equivalent refund shall be tendered to the multiple beneficiaries, trustee, administrator, or executor of the estate.]~~
- (5){(8)} Payments of taxable distributions made pursuant to this section shall be subject to state and federal income tax as appropriate.

➔Section 19. KRS 61.645 is amended to read as follows:

- (1) The County Employees Retirement System, Kentucky Employees Retirement System, and State Police Retirement System shall be administered by the board of trustees of the Kentucky Retirement Systems composed of nine (9) members, who shall be selected as follows:
- (a) The secretary of the Personnel Cabinet shall serve as trustee for as long as he occupies the position of secretary under KRS 18A.015, except as provided under subsections (5) and (6) of this section;
  - (b) Two (2) trustees, who shall be members or retired from the County Employees Retirement System, elected by the members and retired members of the County Employees Retirement System;
  - (c) One (1) trustee, who shall be a member or retired from the State Police Retirement System, elected by the members and retired members of the State Police Retirement System;
  - (d) Two (2) trustees, who shall be members or retired from the Kentucky Employees Retirement System, elected by the members and retired members of the Kentucky Employees Retirement System; and
  - (e) Three (3) trustees, appointed by the Governor of the Commonwealth. Of the three (3) trustees appointed by the Governor, one (1) shall be knowledgeable about the impact of pension requirements on local governments.

- (2) The board is hereby granted the powers and privileges of a corporation, including but not limited to the following powers:
  - (a) To sue and be sued in its corporate name;
  - (b) To make bylaws not inconsistent with the law;
  - (c) To conduct the business and promote the purposes for which it was formed;
  - (d) To contract for investment counseling, actuarial, auditing, medical, and other professional or technical services as required to carry out the obligations of the board without limitation, notwithstanding the provisions of KRS Chapters 45, 45A, 56, and 57;
  - (e) To purchase fiduciary liability insurance;
  - (f) To acquire, hold, sell, dispose of, pledge, lease, or mortgage, the goods or property necessary to exercise the board's powers and perform the board's duties without limitation, notwithstanding the limitations of KRS Chapters 45, 45A, and 56; and
  - (g) The board shall reimburse any trustee, officer, or employee for any legal expense resulting from a civil action arising out of the performance of his official duties.
- (3) Notwithstanding the provisions of subsection (1) of this section, each trustee shall serve a term of four (4) years or until his successor is duly qualified except as otherwise provided in this section. An elected trustee shall not serve more than three (3) consecutive four (4) year terms. An elected trustee who has served three (3) consecutive terms may be elected again after an absence of four (4) years from the board.
- (4)
  - (a) The trustees selected by the membership of each of the various retirement systems shall be elected by ballot. For each trustee to be elected, the board may nominate, not less than six (6) months before a term of office of a trustee is due to expire, three (3) constitutionally eligible individuals.
  - (b) Individuals may be nominated by the retirement system members which are to elect the trustee by presenting to the executive director, not less than four (4) months before a term of office of a trustee is due to expire, a petition, bearing the name, Social Security number, and signature of no less than one-tenth (1/10) of the number voting in the last election by the retirement system members.
  - (c) Within four (4) months of the nominations made in accordance with paragraphs (a) and (b) of this subsection, the executive director shall cause to be prepared an official ballot. The ballot shall carry the name, address, and position title of each individual nominated by the board and by petition. Provisions shall also be made for write-in votes.
  - (d) The ballots shall be distributed to the eligible voters by mail to their last known residence address.
  - (e) The ballots shall be addressed to the Kentucky Retirement Systems in care of a predetermined box number at a United States Post Office located within Kentucky. Access to this post office box shall be limited to the board's contracted auditing firm. The individual receiving a plurality of votes shall be declared elected.
  - (f) The eligible voter shall cast his ballot by checking a square opposite the name of the candidate of his choice. He shall sign and mail the ballot at least thirty (30) days prior to the date the term to be filled is due to expire. The latest mailing date shall be printed on the ballot.
  - (g) The board's contracted auditing firm shall report in writing the outcome to the chair of the board of trustees. Cost of an election shall be payable from the funds of the system for which the trustee is elected.
  - (h) ***For purposes of this subsection, an eligible voter shall be a person who was a member of the retirement system on December 31 of the year preceding the election year.***
- (5) Any vacancy which may occur in an appointed position shall be filled in the same manner which provides for the selection of the particular trustee, and any vacancy which may occur in an elected position shall be filled by appointment by a majority vote of the remaining trustees, and if the secretary of the Personnel Cabinet resigns his position as trustee, it shall be filled by appointment made by the Governor; however, any vacancy shall be filled only for the duration of the unexpired term.
- (6)
  - (a) Membership on the board of trustees shall not be incompatible with any other office unless a constitutional incompatibility exists. No trustee shall serve in more than one (1) position as trustee on

the board; and if a trustee holds more than one (1) position as trustee on the board, he shall resign a position.

- (b) A trustee shall be removed from office upon conviction of a felony or for a finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction.
  - (c) ***A current or former employee of Kentucky Retirement Systems shall not be eligible to serve as a member of the board.***
- (7) Trustees who do not otherwise receive a salary from the State Treasury shall receive a per diem of eighty dollars (\$80) for each day they are in session or on official duty, and they shall be reimbursed for their actual and necessary expenses in accordance with state administrative regulations and standards.
- (8) The board shall meet at least once in each quarter of the year and may meet in special session upon the call of the chair or the executive director. It shall elect a chair and a vice chair. A majority of the trustees shall constitute a quorum and all actions taken by the board shall be by affirmative vote of a majority of the trustees present.
- (9) (a) The board of trustees shall appoint or contract for the services of an executive director and fix the compensation and other terms of employment for this position without limitation of the provisions of KRS Chapters 18A and 45A and KRS 64.640. The executive director shall be the chief administrative officer of the board.
- (b) The board of trustees shall authorize the executive director to appoint the employees deemed necessary to transact the business of the system. For an appointee deemed to be in a policy-making position, the board shall determine the compensation and other terms of employment for the policy-making position without limitation of the provisions of KRS Chapter 18A. Anything in the Kentucky Revised Statutes to the contrary notwithstanding, the power over and control of determining and maintaining an adequate complement of employees shall be under the exclusive jurisdiction of the board of trustees.
- (c) Effective December 1, 2002, all employees of the Kentucky Retirement Systems shall be transferred to a personnel system adopted by the board. Employees of Kentucky Retirement Systems covered by the personnel system adopted by the board shall be:
1. Provided the same health insurance coverage as all other state government employees as provided in KRS 18A.225;
  2. Eligible to participate in the deferred compensation system provided for all state government employees as provided in KRS 18A.250 to 18A.265;
  3. Provided the same life insurance coverage provided all state employees as provided in KRS 18A.205 to 18A.215;
  4. Reimbursed for all reasonable and necessary travel expenses and disbursements incurred or made in the performance of official duties in accordance with KRS Chapter 45;
  5. Ensured equal employment opportunity regardless of race, color, gender, religion, national origin, disability, sexual orientation, or age;
  6. Given those holidays and rights granted to state employees as provided in KRS 18A.190;
  7. Paid a salary not less than the salary paid as of the date of transfer to the personnel system, unless voluntarily demoted or involuntarily demoted for cause;
  8. Credited with all accumulated sick leave, compensatory time, and annual leave accumulated in accordance with KRS Chapter 18A, and for an employee leaving service, the system shall attest to the employee's accumulated sick leave, compensatory time, and annual leave which shall be credited with other state and county employers to the extent provided for by statute or policy. The Kentucky Retirement Systems may, at the discretion of the board, accept from other state and county employers all accumulated sick leave, compensatory time, and annual leave for an employee leaving a state or county employer and accepting employment with the Kentucky Retirement Systems. The executive branch shall accept from the Kentucky Retirement Systems all accumulated sick leave, compensatory time, and annual leave for an employee leaving the Kentucky Retirement Systems and accepting employment with the executive branch. The

- Kentucky Retirement Systems shall accept from the executive branch all accumulated sick leave, compensatory time, and annual leave for an employee leaving the executive branch and accepting employment with the Kentucky Retirement Systems;
9. Classified with status upon transfer to the personnel system on December 1, 2002, if the employee was classified with status as a merit employee under KRS Chapter 18A. Any employee of the Kentucky Retirement Systems transferred on December 1, 2002, during the probationary period before earning classified status as a merit system employee under KRS Chapter 18A shall transfer all accrued probationary time and the time shall be credited to the probationary time required to attain classified status in the personnel system;
  10. Ensured a grievance appeal procedure and the employee's right to have a representative present at each step of the grievance procedure; and
  11. Ensured of the right of appeal in a manner consistent with the provisions of KRS 18A.095 to the Kentucky Personnel Board and employees classified with status in the personnel system shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.
- (d) The board shall adopt by administrative regulation a fair, equitable, and comprehensive personnel policy with a minimum of the following provisions for the personnel system:
1. A code of conduct including provisions describing performance of duties, abuse of position, conflicts of interest, and outside employment;
  2. An appointments plan including provisions describing the appointing authority, appointments, equal employment policy, sexual harassment policy, and drug-free workplace policy;
  3. A classification plan including provisions describing class specifications, position actions, and employee actions;
  4. A compensation plan based on qualifications, experience, and responsibilities and including provisions which describe a salary schedule, salary adjustments, salary advancements, and an employee suggestion program;
  5. Separations, disciplinary actions, and appeal policies including provisions describing classified with status, exemptions from classified with status, layoffs, abolishment of position, dismissals and notification of dismissal, dismissals during probationary period, disciplinary actions, right of appeal, grievance and appeal procedures, and an employee grievance and appeal committee;
  6. Service and benefits regulations including provisions describing hours of work, fringe benefits, workers' compensation, payroll deductions, holidays, inclement weather days, compensatory time, retirement, resignations, employee evaluations, and political activities; and
  7. Leave policies including provisions describing special leave, annual leave, court leave and jury duty, military leave, voting leave, educational leave, sick leave, family medical leave, leave without pay, absence without leave, and blood donation leave.
- (e) The board shall require the executive director and the employees as it thinks proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62.
- (f) The board shall establish a system of accounting.
- (g) The board shall do all things, take all actions, and promulgate all administrative regulations, not inconsistent with the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852, necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852 conform with federal statute or regulation and meet the qualification requirements under 26 U.S.C. sec. 401(a), applicable federal regulations, and other published guidance. Provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852 which conflict with federal statute or regulation or qualification under 26 U.S.C. sec. 401(a), applicable federal regulations, and other published guidance shall not be available. The board shall have the authority to promulgate administrative regulations to conform with federal statute and regulation and to meet the qualification requirements under 26 U.S.C. sec. 401(a), including an administrative regulation to comply with 26 U.S.C. sec. 401(a)(9). The board shall have the authority to promulgate an administrative regulation to

comply with any consent decrees entered into by the board in Civil Action No. 3:99CV500(C) in order to bring the systems into compliance with the Age Discrimination in Employment Act, 29 U.S.C. Section 621, et seq., as amended.

- (10) All employees of the board shall serve during its will and pleasure. Notwithstanding any statute to the contrary, employees shall not be considered legislative agents under KRS 6.611.
- (11) The Attorney General, or an assistant designated by him, may attend each meeting of the board and may receive the agenda, board minutes, and other information distributed to trustees of the board upon request. The Attorney General may act as legal adviser and attorney for the board, and the board may contract for legal services, notwithstanding the limitations of KRS Chapter 12 or 13B.
- (12) The system shall publish an annual financial report showing all receipts, disbursements, assets, and liabilities. The annual report shall include a copy of an audit conducted in accordance with generally accepted auditing standards. The board may select an independent certified public accountant or the Auditor of Public Accounts to perform the audit. If the audit is performed by an independent certified public accountant, the Auditor of Public Accounts shall not be required to perform an audit pursuant to KRS 43.050(2)(a), but may perform an audit at his discretion. All proceedings and records of the board shall be open for inspection by the public. The system shall make copies of the audit required by this subsection available for examination by any member, retiree, or beneficiary in the office of the executive director of the Kentucky Retirement Systems and in other places as necessary to make the audit available to all members, retirees, and beneficiaries. A copy of the annual audit shall be sent to the Legislative Research Commission no later than ten (10) days after receipt by the board.
- (13) All expenses incurred by or on behalf of the system and the board in the administration of the system during a fiscal year shall be paid from the retirement allowance account. Any other statute to the contrary notwithstanding, authorization for all expenditures relating to the administrative operations of the system shall be contained in the biennial budget unit request, branch budget recommendation, and the financial plan adopted by the General Assembly pursuant to KRS Chapter 48.
- (14) Any person adversely affected by a decision of the board, except as provided under subsection (16) of this section or KRS 61.665, involving KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852, may appeal the decision of the board to the Franklin Circuit Court within sixty (60) days of the board action.
- (15)
  - (a) A trustee shall discharge his duties as a trustee, including his duties as a member of a committee:
    1. In good faith;
    2. On an informed basis; and
    3. In a manner he honestly believes to be in the best interest of the Kentucky Retirement Systems.
  - (b) A trustee discharges his duties on an informed basis if, when he makes an inquiry into the business and affairs of the Kentucky Retirement Systems or into a particular action to be taken or decision to be made, he exercises the care an ordinary prudent person in a like position would exercise under similar circumstances.
  - (c) In discharging his duties, a trustee may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
    1. One (1) or more officers or employees of the Kentucky Retirement Systems whom the trustee honestly believes to be reliable and competent in the matters presented;
    2. Legal counsel, public accountants, actuaries, or other persons as to matters the trustee honestly believes are within the person's professional or expert competence; or
    3. A committee of the board of trustees of which he is not a member if the trustee honestly believes the committee merits confidence.
  - (d) A trustee shall not be considered as acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph (c) of this subsection unwarranted.
  - (e) Any action taken as a trustee, or any failure to take any action as a trustee, shall not be the basis for monetary damages or injunctive relief unless:

1. The trustee has breached or failed to perform the duties of the trustee's office in compliance with this section; and
  2. In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety, or property.
- (f) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of paragraph (e)1. and 2. of this subsection, and the burden of proving that the breach or failure to perform was the legal cause of damages suffered by the Kentucky Retirement Systems.
- (g) Nothing in this section shall eliminate or limit the liability of any trustee for any act or omission occurring prior to July 15, 1988.
- (h) In discharging his or her administrative duties under this section, a trustee shall strive to administer the retirement system in an efficient and cost-effective manner for the taxpayers of the Commonwealth of Kentucky.
- (16) When an order by the system substantially impairs the benefits or rights of a member, retired member, or recipient, except action which relates to entitlement to disability benefits, the affected member, retired member, or recipient may request a hearing to be held in accordance with KRS Chapter 13B. The board may establish an appeals committee whose members shall be appointed by the chair and who shall have authority to act upon the recommendations and reports of the hearing officer on behalf of the board. The member, retired member, or recipient aggrieved by a final order of the board following the hearing may appeal the decision to the Franklin Circuit Court, in accordance with KRS Chapter 13B.
- (17) The board shall give the Kentucky Education Support Personnel Association twenty-four (24) hours notice of the board meetings, to the extent possible.
- (18) The board shall establish a formal trustee education program for all trustees of the board. The program shall include but not be limited to the following:
- (a) A required orientation program for all new trustees elected or appointed to the board. The orientation program shall include training on:
    1. Benefits and benefits administration;
    2. Investment concepts, policies, and current composition and administration of retirement systems investments;
    3. Laws, bylaws, and administrative regulations pertaining to the retirement systems and to fiduciaries; and
    4. Actuarial and financial concepts pertaining to the retirement systems.

If a trustee fails to complete the orientation program within one (1) year from the beginning of his or her first term on the board, the retirement systems shall withhold payment of the per diem and travel expenses due to the board member under this section and KRS 16.640 and 78.780 until the trustee has completed the orientation program;
  - (b) Annual required training for board members on the administration, benefits, financing, and investing of the retirement systems. If a trustee fails to complete the annual required training during the calendar or fiscal year, the retirement systems shall withhold payment of the per diem and travel expenses due to the board member under this section and KRS 16.640 and 78.780 until the board member has met the annual training requirements; and
  - (c) The retirement systems shall incorporate by reference in an administrative regulation, pursuant to KRS 13A.2251, the trustee education program.
- (19) In order to improve public transparency regarding the administration of the systems, the board of trustees shall adopt a best practices model by posting the following information to the retirement systems' Web site and shall make available to the public:
- (a) Meeting notices and agendas for all meetings of the board. Notices and agendas shall be posted to the retirement systems' Web site at least seventy-two (72) hours in advance of the board or committee meetings, except in the case of special or emergency meetings as provided by KRS 61.823;

- (b) The Comprehensive Annual Financial Report with the information as follows:
1. A general overview and update on the retirement systems by the executive director;
  2. A listing of the board of trustees;
  3. A listing of key staff;
  4. An organizational chart;
  5. Financial information, including a statement of plan net assets, a statement of changes in plan net assets, an actuarial value of assets, a schedule of investments, a statement of funded status and funding progress, and other supporting data;
  6. Investment information, including a general overview, a list of the retirement system's professional consultants, a total return on retirement systems investments over a historical period, an investment summary, contracted investment management expenses, transaction commissions, and a schedule of investments;
  7. The annual actuarial valuation report on the pension benefit and the medical insurance benefit; and
  8. A general statistical section, including information on contributions, benefit payouts, and retirement systems' demographic data;
- (c) All external audits;
- (d) All board minutes or other materials that require adoption or ratification by the board of trustees. The items listed in this paragraph shall be posted within seventy-two (72) hours of adoption or ratification of the board;
- (e) All bylaws, policies, or procedures adopted or ratified by the board of trustees;
- (f) The retirement systems' summary plan description;
- (g) A document containing an unofficial copy of the statutes governing the systems administered by Kentucky Retirement Systems;
- (h) A listing of the members of the board of trustees and membership on each committee established by the board, including any investment committees;
- (i) All investment holdings and commissions for each fund administered by the board. The board shall update the list of holdings and commissions on a quarterly basis for fiscal years beginning on or after July 1, 2008; and
- (j) An update of investment returns, asset allocations, and the performance of the funds against benchmarks adopted by the board for each fund and for each asset class administered by the board. The update shall be posted on a quarterly basis for fiscal years beginning on or after July 1, 2008.
- (20) Notwithstanding the requirements of subsection (19) of this section, the retirement systems shall not be required to furnish information that is protected under KRS 61.661, exempt under KRS 61.878, or that, if disclosed, would compromise the retirement systems' ability to competitively invest in real estate or other asset classes, or to competitively negotiate vendor fees.

➔Section 20. KRS 61.675 is amended to read as follows:

- (1) The employer shall prepare the records and, from time to time, shall furnish the information the system may require in the discharge of its duties. Upon employment of an employee, the employer shall inform him of his duties and obligations in connection with the system as a condition of employment.
- (2) The system may at any time conduct an audit of the employer in order to determine if the employer is complying with the provisions of KRS 16.505 to 16.652, 61.610 to 61.705, or 78.510 to 78.852. The system shall have access to and may examine all books, accounts, reports, correspondence files, and records of any employer. Every employer, employee, or agency reporting official of a department or county, as defined in KRS 78.510(3), having records in his possession or under his control, shall permit access to and examination of the records upon the request of the system.

- (3) (a) Any agency participating in the Kentucky Employees Retirement System which is not an integral part of the executive branch of state government shall **file the following at** ~~forward the employer and employee contributions required under KRS 61.560 and 61.565 to~~ the retirement office on or before the tenth day of the month following the period being reported:
1. **The employer and employee contributions required under KRS 61.560 and 61.565; and**
  2. **A record of all contributions to the system on the forms prescribed by the board.**
- (b) If the agency fails to ~~file~~ ~~forward~~ all contributions **and reports** on or before the tenth day of the month following the period being reported, interest on the delinquent contributions at the actuarial rate adopted by the board compounded annually, but not less than one thousand dollars (\$1,000), shall be added to the amount due the system.

➔Section 21. KRS 61.701 is amended to read as follows:

- (1) (a) There is hereby created and established a **trust** fund to be known as "Kentucky Retirement Systems Insurance **Trust** Fund." All assets received in the **trust** fund shall be deemed trust funds to be held and applied solely as provided in this section. **Assets of the trust fund shall not be used for any other purpose and shall not be used to pay the claims of creditors or any individual, person, or employer participating in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System.**
- (b) **The trust fund is intended to be established as a trust exempt from taxation under 26 U.S.C. sec. 115.**
- (2) The **trust** fund is created ~~pursuant to 26 U.S.C. sec. 106~~ for the purpose of providing a ~~trust fund~~ separate from the retirement funds. **Trust fund assets are dedicated for use for health** ~~and is to be used to provide fringe~~ benefits as provided in KRS 61.702, **and as permitted under 26 U.S.C. secs. 105 and 106**, to retired recipients and employees of employers participating in the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System, and to certain of their dependents or beneficiaries, **including but not limited to qualified beneficiaries as described in 42 U.S.C. sec. 300bb-1 et seq.**
- (3) The **trust** fund shall be administered by the board of trustees of the Kentucky Retirement Systems and the board shall **serve as trustees of the fund. The board shall** manage the assets of the fund in the same manner in which it administers the retirement funds, **except that separate accounting and financial reporting shall be maintained for the trust fund.**
- (4) **In addition to the requirements of subsection (2) of this section, the employers participating in the trust fund are limited to the Commonwealth, political subdivisions of the Commonwealth, and entities whose income is exempt from taxation under 26 U.S.C. sec. 115. No other entity may participate in the trust fund.**
- (5) **If the trust fund is terminated, the assets in the trust fund may revert, after the payment of all liabilities, to the participating employers as determined by the board of trustees.**
- (6) **The board of trustees may adopt regulations and procedures and take all action necessary and appropriate to provide that the income of the trust fund is exempt from taxation under Title 26 of United States Code.**
- (7) **The establishment of Kentucky Retirement Systems Insurance Trust Fund shall not diminish or expand the rights of any recipients, employees, or dependents to health benefits.**

➔Section 22. KRS 61.702 is amended to read as follows:

- (1) (a) The board of trustees of Kentucky Retirement Systems shall arrange by appropriate contract or on a self-insured basis to provide a group hospital and medical insurance plan for present and future recipients of a retirement allowance from the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System, except as provided in subsection (8) of this section. The board shall also arrange to provide health care coverage through an insurer licensed pursuant to Subtitle 38 of KRS Chapter 304 and offering a managed care plan as defined in KRS 304.17A-500, as an alternative to group hospital and medical insurance for any person eligible for hospital and medical benefits under this section. Any person who chooses coverage under a managed care plan shall pay, by payroll deduction from the retirement allowance or by another method, the difference in premium between the cost of the managed care plan coverage and the benefits to which he would be entitled under this section. **For purposes of this section, "hospital and medical insurance plan" means any hospital and medical expense policy or certificate, provider-sponsored integrated**

***health delivery network, self-insured medical plan, health maintenance organization contract, or other health benefit plan.***

- (b) The board may authorize present and future recipients of a retirement allowance from any of the three (3) retirement systems to be included in the state employees' group for hospital and medical insurance and shall provide benefits for recipients equal to those provided to state employees having the same Medicare hospital and medical insurance eligibility status, except as provided in subsection (8) of this section. Notwithstanding the provisions of any other statute, recipients shall be included in the same class as current state employees in determining medical insurance policies and premiums.
  - (c) For recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky having the same Medicare hospital and medical insurance eligibility status, the board shall provide a medical insurance reimbursement plan as described in subsection (7) of this section.
  - (d) ***Notwithstanding anything in KRS Chapter 61 to the contrary, the board of trustees, in its discretion, may take necessary steps to ensure compliance with 42 U.S.C. sec. 300bb-1 et seq., including but not limited to receiving contributions and premiums from, and providing benefits pursuant to this section to, persons entitled to continuation coverage under 42 U.S.C. sec. 300bb-1 et seq., regardless of whether such persons are recipients of a retirement allowance.***
- (2) (a) Each employer participating in the State Police Retirement System as provided for in KRS 16.505 to 16.652, each employer participating in the County Employees Retirement System as provided in KRS 78.510 to 78.852, and each employer participating in the Kentucky Employees Retirement System as provided for in KRS 61.510 to 61.705 shall contribute to the Kentucky Retirement Systems insurance ***trust*** fund the amount necessary to provide hospital and medical insurance as provided for under this section. Such employer contribution rate shall be developed by appropriate actuarial method as a part of the determination of each respective employer contribution rate to each respective retirement system determined under KRS 61.565.
- (b) 1. Each employer described in paragraph (a) of this subsection shall deduct from the creditable compensation of each member having a membership date on or after September 1, 2008, an amount equal to one percent (1%) of the member's creditable compensation. The deducted amounts shall be credited to ***accounts established pursuant to 26 U.S.C. Sec 401(h), within the funds established in KRS 16.510, 61.515, and 78.520***~~[the Kentucky Retirement Systems insurance fund established by KRS 61.701].~~
  - 2. The employer shall file the contributions as provided by subparagraph 1. of this paragraph at the retirement office in accordance with KRS 61.675 and 78.625. Any interest or penalties paid on any delinquent contributions shall be credited to ***accounts established pursuant to 26 U.S.C. sec. 401(h), within the funds established in KRS 16.510, 61.515, and 78.520***~~[the Kentucky Retirement Systems insurance fund].~~ Notwithstanding any minimum compensation requirements provided by law, the deductions provided by this paragraph shall be made, and the compensation of the member shall be reduced accordingly.
  - 3. Each employer shall submit payroll reports, contributions lists, and other data as may be required by administrative regulation promulgated by the board of trustees pursuant to KRS Chapter 13A.
  - 4. Every member shall be deemed to consent and agree to the deductions made pursuant to this paragraph, and the payment of salary or compensation less the deductions shall be a full and complete discharge of all claims for services rendered by the person during the period covered by the payment, except as to any benefits provided by KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. No member may elect whether to participate in, or choose the contribution amount to ***accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520***~~[the Kentucky Retirement Systems insurance fund].~~ The member shall have no option to receive the contribution required by this paragraph directly instead of having the contribution paid to ***accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520***~~[the Kentucky Retirement Systems insurance fund].~~ No member may receive a rebate or refund of contributions. ***If a member establishes a membership date prior to September 1, 2008, pursuant to KRS 61.552(1) or 61.552(23), then this paragraph shall not apply to the member and all***

*contributions previously deducted in accordance with this paragraph shall be refunded to the member without interest.* The contribution made pursuant to this paragraph shall not act as a reduction or offset to any other contribution required of a member or recipient under KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852.

5. The board of trustees, at its discretion, may direct that the contributions required by this paragraph be accounted for within *accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520*~~[the Kentucky Retirement Systems insurance fund]~~ through the use of separate accounts.
- (3) (a) The premium required to provide hospital and medical benefits under this section shall be paid:
1. Wholly or partly from funds contributed by the recipient of a retirement allowance, by payroll deduction, or otherwise;
  2. Wholly or partly from funds contributed by the Kentucky Retirement Systems insurance *trust* fund;
  3. *Wholly or partly from funds contributed to accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520;*
  4. Wholly or partly from funds contributed by another state-administered retirement system under a reciprocal arrangement, except that any portion of the premium paid from the Kentucky Retirement Systems insurance *trust* fund *or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520* under a reciprocal agreement shall not exceed the amount that would be payable under this section if all the member's service were in one (1) of the systems administered by the Kentucky Retirement Systems;
- 5.~~[4.]~~ Partly from subparagraphs 1., ~~to 4.~~~~[2., or 3.]~~ of this paragraph, except that any premium for hospital and medical insurance over the amount contributed by the Kentucky Retirement Systems insurance *trust* fund; *accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520;* or another state-administered retirement system under a reciprocal agreement shall be paid by the recipient *by an automatic electronic transfer of funds*. If the board provides for cross-referencing of insurance premiums, the employer's contribution for the working member or spouse shall be applied toward the premium, and the Kentucky Retirement Systems insurance *trust* fund *or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520* shall pay the balance, not to exceed the monthly contribution; or
- 6.~~[5.]~~ In full from the Kentucky Retirement Systems insurance *trust* fund *or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520* for all recipients of a retirement allowance from any of the three (3) retirement systems where such recipient is a retired former member of one (1) or more of the three (3) retirement systems (not a beneficiary or dependent child receiving benefits) and had two hundred and forty (240) months or more of service upon retirement. Should such recipient have less than two hundred forty (240) months of service but have at least one hundred eighty (180) months of service, seventy-five percent (75%) of such premium shall be paid from the insurance *trust* fund *or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520*, provided such recipient agrees to pay the remaining twenty-five percent (25%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred eighty (180) months of service but have at least one hundred twenty (120) months of service, fifty percent (50%) of such premium shall be paid from the insurance *trust* fund *or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520*, provided such recipient agrees to pay the remaining fifty percent (50%) by payroll deduction from his retirement allowance or by another method. Should such recipient have less than one hundred twenty (120) months of service but have at least forty-eight (48) months of service, twenty-five percent (25%) of such premium shall be paid from the insurance *trust* fund *or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520*, provided such recipient agrees to pay the remaining seventy-five percent (75%) by payroll deduction from his retirement allowance or by another method. Notwithstanding the foregoing provisions of this subsection, an

employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems who becomes disabled in the line of duty as defined in KRS 16.505(19) or 61.621, shall have his premium paid in full as if he had two hundred forty (240) months or more of service. Further, an employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems who is killed in the line of duty as defined in KRS 16.505(19) or 61.621, shall have the premium for the beneficiary, if the beneficiary is the member's spouse, and for each dependent child paid so long as they individually remain eligible for a monthly retirement benefit. "Months of service" as used in this section shall mean the total months of combined service used to determine benefits under any or all of the three (3) retirement systems, except service added to determine disability benefits shall not be counted as "months of service." For current and former employees of the Council on Postsecondary Education who were employed prior to January 1, 1993, and who earn at least fifteen (15) years of service credit in the Kentucky Employees Retirement System, "months of service" shall also include vested service in another retirement system other than the Kentucky Teachers' Retirement System sponsored by the Council on Postsecondary Education.

- (b) 1. For a member electing insurance coverage through the Kentucky Retirement Systems, "months of service" shall include, in addition to service as described in paragraph (a) of this subsection, service credit in one (1) of the other state-administered retirement plans.
  - 2. Effective August 1, 1998, the Kentucky Retirement Systems shall compute the member's combined service, including service credit in another state-administered retirement plan, and calculate the portion of the member's premium to be paid by the insurance *trust fund accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520*, according to the criteria established in paragraph (a) of this subsection. Each state-administered retirement plan annually shall pay to the insurance *trust fund* the percentage of the system's cost of the retiree's monthly contribution for single coverage for hospital and medical insurance which shall be equal to the percentage of the member's number of months of service in the other state-administered retirement plan divided by his total combined service. The amounts paid by the other state-administered retirement plans and the insurance *trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520* shall not be more than one hundred percent (100%) of the monthly contribution adopted by the respective boards of trustees.
  - 3. A member may not elect coverage for hospital and medical benefits under this subsection through more than one (1) of the state-administered retirement plans.
  - 4. A state-administered retirement plan shall not pay any portion of a member's monthly contribution for medical insurance unless the member is a recipient or annuitant of the plan.
  - 5. *The premium paid by the Kentucky Retirement Systems insurance trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520 shall not exceed one hundred percent (100%) of the monthly contribution rate toward hospital and medical insurance coverage approved by the board of trustees of the Kentucky Retirement Systems.*
- (4) (a) Group rates under the hospital and medical insurance plan shall be made available to the spouse, each dependent child, and each disabled child, regardless of the disabled child's age, of a recipient who is a former member or the beneficiary, if the premium for the hospital and medical insurance for the spouse, each dependent child, and each disabled child, or beneficiary is paid by payroll deduction from the retirement allowance or by another method. *For purposes of this subsection only*, a child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits *or meets the dependent disability standard established by the Department of Employee Insurance in the Personnel Cabinet.*
  - (b) The other provisions of this section notwithstanding, the insurance *trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520* shall pay a percentage of the monthly contribution for the spouse and for each dependent child of a recipient who was a member of the General Assembly and is receiving a retirement allowance based on General Assembly service, of the Kentucky Employees Retirement System and determined to be in a

hazardous position, of the County Employees Retirement System, and determined to be in a hazardous position or of the State Police Retirement System. The percentage of the monthly contribution paid for the spouse and each dependent child of a recipient who was in a hazardous position shall be based solely on the member's service with the State Police Retirement System or service in a hazardous position using the formula in subsection (3)(a) of this section, except that for any recipient of a retirement allowance from the County Employees Retirement System who was contributing to the system on January 1, 1998, for service in a hazardous position, the percentage of the monthly contribution shall be based on the total of hazardous service and any nonhazardous service as a police or firefighter with the same agency, if that agency was participating in the County Employees Retirement System but did not offer hazardous duty coverage for its police and firefighters at the time of initial participation.

- (c) The insurance *trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, KRS 61.515, and 78.520* shall continue the same level of coverage for a recipient who was a member of the County Employees Retirement System after the age of sixty-five (65) as before the age of sixty-five (65), if the recipient is not eligible for Medicare coverage. If the insurance *trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520* provides coverage for the spouse or each dependent child of a former member of the County Employees Retirement System, the insurance *trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520* shall continue the same level of coverage for the spouse or each dependent child after the age of sixty-five (65) as before the age of sixty-five (65), if the spouse or dependent child is not eligible for Medicare coverage.
- (5) After July 1, 1998, notwithstanding any other provision to the contrary, a member who holds a judicial office but did not elect to participate in the Judicial Retirement Plan and is participating instead in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System, as provided in KRS 61.680, and who has at least twenty (20) years of total service, one-half (1/2) of which is in a judicial office, shall receive the same hospital and medical insurance benefits, including paid benefits for spouse and dependents, as provided to persons retiring under the provisions of KRS 21.427. The Administrative Office of the Courts shall pay the cost of the medical insurance benefits provided by this subsection.
- (6) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the insurance *trust fund or accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520* shall not constitute taxable income to an insured recipient. No commission shall be paid for hospital and medical insurance procured under authority of this section.
- (7) The board shall promulgate an administrative regulation to establish a medical insurance reimbursement plan to provide reimbursement for hospital and medical insurance premiums of recipients of a retirement allowance who are not eligible for the same level of hospital and medical benefits as recipients living in Kentucky and having the same Medicare hospital and medical insurance eligibility status. An eligible recipient shall file proof of payment for hospital and medical insurance at the retirement office. Reimbursement to eligible recipients shall be made on a quarterly basis. The recipient shall be eligible for reimbursement of substantiated medical insurance premiums for an amount not to exceed the total monthly premium determined under subsection (3) of this section. The plan shall not be made available if all recipients are eligible for the same coverage as recipients living in Kentucky.
- (8) (a) 1. For employees having a membership date on or after July 1, 2003, and before September 1, 2008, participation in the insurance benefits provided under this section shall not be allowed until the employee has earned at least one hundred twenty (120) months of service in the state-administered retirement systems.
2. For an employee having a membership date on or after September 1, 2008, participation in the insurance benefits provided under this section shall not be allowed until the employee has earned at least one hundred eighty (180) months of service credited under KRS 16.543(1), 61.543(1), or 78.615(1) or another state-administered retirement system.

- (b) An employee who meets the minimum service requirements as provided by paragraph (a) of this subsection shall be eligible for benefits as follows:
1. For employees who are not in a hazardous position, a monthly insurance contribution of ten dollars (\$10) for each year of service as a participating employee.
  2. For employees who are in a hazardous position or who participate in the State Police Retirement System, a monthly insurance contribution of fifteen dollars (\$15) for each year of service as a participating employee in a hazardous position or as a participating member of the State Police Retirement System. Upon the death of the retired member, the beneficiary, if the beneficiary is the member's spouse, shall be entitled to a monthly insurance contribution of ten dollars (\$10) for each year of service the member attained as a participating employee in a hazardous position or as a participating member of the State Police Retirement System.
- (c) *1.* The minimum service requirement to participate in benefits as provided by paragraph (a) of this subsection shall be waived for a member who is disabled or killed in the line of duty as defined in KRS 16.505(19) ~~or KRS 61.621~~, and the member or his ***spouse and eligible dependents*** ~~beneficiary~~ shall be entitled to the benefits payable under this subsection as though the member had twenty (20) years of service in a hazardous position.
- 2.* ***The minimum service required to participate in benefits as provided by paragraph (a) of this subsection shall be waived for a member who is disabled in the line of duty as defined in KRS 61.621, and the member shall be entitled to the benefits payable under this subsection as though the member has twenty (20) years of service in a nonhazardous position.***
- 3.* ***The minimum service required to participate in benefits as provided by paragraph (a) of this subsection shall be waived for a member who is killed in the line of duty as described in KRS 61.621, and the member's spouse and eligible dependents shall be entitled to the benefits payable under this subsection as though the member has twenty (20) years of service in a hazardous position.***
- (d) The monthly insurance contribution amount shall be increased July 1 of each year by one and one-half percent (1.5%). The increase shall be cumulative and shall continue to accrue after the member's retirement for as long as a monthly insurance contribution is payable to the retired member or beneficiary.
- (e) The benefits of this subsection provided to a member whose participation begins on or after July 1, 2003, shall not be considered as benefits protected by the inviolable contract provisions of KRS 61.692, 16.652, and 78.852. The General Assembly reserves the right to suspend or reduce the benefits conferred in this subsection if in its judgment the welfare of the Commonwealth so demands.
- (f) An employee whose membership date is on or after September 1, 2008, who retires and is reemployed in a regular full-time position required to participate in one (1) of the systems administered by Kentucky Retirement Systems shall not be eligible for health insurance coverage or benefits provided by this section and shall take coverage with his or her employing agency during the period of reemployment in a regular full-time position.

➔Section 23. KRS 61.705 is amended to read as follows:

- (1) Upon the death of a retired member of the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System who was receiving a monthly retirement allowance based on a minimum of forty-eight (48) months of service or whose retirement allowance based on a minimum of forty-eight (48) months was suspended in accordance with KRS 61.637, a death benefit of five thousand dollars (\$5,000) shall be paid. If the retired member had more than one (1) account in the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System, the system shall pay only one (1) five thousand dollar (\$5,000) death benefit. Application for the death benefit made to the Kentucky Retirement Systems shall include acceptable evidence of death and of the eligibility of the applicant to act on the deceased retired member's behalf.
- (2) The death benefit shall be paid to a beneficiary named by the retired member. Upon retirement or any time thereafter, the retired member may designate on the form prescribed by the board, death benefit designation, ***a person*** ~~an individual~~, ***the retired member's*** ~~his~~ estate, a trust or trustee, ***or a licensed funeral home***, as the

beneficiary of the death benefit. The beneficiary for the death benefit may or may not be the same beneficiary designated in accordance with KRS 61.590(1). If the beneficiary designated under this section *is a person and that person* dies prior to the member, or if the beneficiary was the *retired member's* spouse and they were divorced on the date of the retired member's death, *then* the retired member's estate shall become the beneficiary, unless the retired member has filed a subsequent death benefit designation. *If a licensed funeral home is designated as beneficiary and the licensed funeral home cannot be reasonably identified or located by Kentucky Retirement Systems at the time of the retired member's death, then the retired member's estate shall become the beneficiary of the death benefit.*

- (3) *If, at the time of the retired member's death, a debt to the Kentucky Retirement Systems remains on his or her account, the balance owed shall be deducted from the five thousand dollar (\$5,000) death benefit.*

➔Section 24. KRS 78.510 is amended to read as follows:

As used in KRS 78.510 to 78.852, unless the context otherwise requires:

- (1) "System" means the County Employees Retirement System;
- (2) "Board" means the board of trustees of the system as provided in KRS 78.780;
- (3) "County" means any county, or nonprofit organization created and governed by a county, counties, or elected county officers, sheriff and his employees, county clerk and his employees, circuit clerk and his deputies, former circuit clerks or former circuit clerk deputies, or political subdivision or instrumentality, including school boards, charter county government, or urban-county government participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency, organization, or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (4) "School board" means any board of education participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (5) "Examiner" means the medical examiners as provided in KRS 61.665;
- (6) "Employee" means every regular full-time appointed or elective officer or employee of a participating county and the coroner of a participating county, whether or not he qualifies as a regular full-time officer. The term shall not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 78.510 to 78.852;
- (7) "Employer" means a county, as defined in subsection (3) of this section, the elected officials of a county, or any authority of the county having the power to appoint or elect an employee to office or employment in the county;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1958, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided;
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1958, for which creditable compensation was paid. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work. Twelve (12) months of current service in the system shall be required to validate prior service;
- (12) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4), together with interest credited on the amounts, and any other amounts the member shall have contributed thereto, including interest credited thereon. *For members who begin participating on or after September 1, 2008, "accumulated contributions" shall not*

*include employee contributions that are deposited into accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, as prescribed by subsection (2)(b) of Section 22 of this Act;*

- (13) "Creditable compensation" means all salary, wages, and fees, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation", including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's service with the system in which it is recorded if it is equal to or greater than one thousand dollars (\$1,000). If compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, sick leave except as provided in KRS 78.616(5), and other items determined by the board shall be excluded. Creditable compensation shall also include amounts that are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code. Creditable compensation shall also include elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4). For employees who begin participating on or after September 1, 2008, creditable compensation shall not include payments for compensatory time;
- (14) "Final compensation" means:
- (a) For a member who begins participating before September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;
  - (b) For a member who is not employed in a hazardous position, as provided in KRS 61.592, whose effective retirement date is between August 1, 2001, and January 1, 2009, and whose total service credit is at least twenty-seven (27) years and whose age and years of service total at least seventy-five (75), final compensation means the creditable compensation of the member during the three (3) fiscal years the member was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used. Notwithstanding the provision of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance;
  - (c) For a member who begins participating before September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;
  - (d) For a member who begins participating on or after September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) complete fiscal years immediately preceding retirement divided by five (5). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit; or
  - (e) For a member who begins participating on or after September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) complete fiscal years he was paid at the highest average monthly rate divided by three (3). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit;
- (15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, and shall include

employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7.5) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;

- (16) "Retirement allowance" means the retirement payments to which a member is entitled;
- (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables ~~[as are from time to time]~~ adopted by the board. ***In cases*** ~~[except in case]~~ of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member, ***unless the member has chosen the Social Security adjustment option as provided for in KRS 61.635(8), in which case the member's actual age shall be used.*** No disability retirement option shall be less than the same option computed under early retirement;
- (18) "Normal retirement date" means the sixty-fifth birthday of a member unless otherwise provided in KRS 78.510 to 78.852;
- (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year. ***The "fiscal year" shall be the limitation year used to determine contribution and benefits limits as set out in 26 U.S.C. sec. 415;***
- (20) "Agency reporting official" means the person designated by the participating agency who shall be responsible for forwarding all employer and employee contributions and a record of the contributions to the system and for performing other administrative duties pursuant to the provisions of KRS 78.510 to 78.852;
- (21) "Regular full-time positions," as used in subsection (6) of this section, shall mean all positions that average one hundred (100) or more hours per month, determined by using the number of hours actually worked in a calendar or fiscal year, or eighty (80) or more hours per month in the case of noncertified employees of school boards, determined by using the number of hours actually worked in a calendar or school year, unless otherwise specified, except:
- (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and that may recur regularly from year to year, in which case the period of time shall not exceed six (6) months in any event;
  - (b) Emergency positions that are positions that do not exceed thirty (30) working days and are nonrenewable;
  - (c) Temporary, also referred to as probationary, positions that are positions of employment with a participating agency for a period of time not to exceed twelve (12) months and not renewable; or
  - (d) Part-time positions that are positions that may be permanent in duration, but that require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty, except in case of noncertified employees of school boards, the school term average shall be eighty (80) hours of work per month, determined by using the number of months actually worked in a calendar or school year, in the performance of duty;
- (22) "Alternate participation plan" means a method of participation in the system as provided for by KRS 78.530(3);
- (23) "Retired member" means any former member receiving a retirement allowance or any former member who has on file at the retirement office the necessary documents for retirement benefits and is no longer contributing to the system;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, beneficiary shall not mean an estate, trust, or trustee;
- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement

allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;

- (27) "Person" means a natural person;
- (28) "School term or year" means the twelve (12) months from July 1 through the following June 30;
- (29) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (30) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula in KRS 61.5525, except the determination of the actuarial cost for classified employees of a school board shall be based on their final compensation, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;
- (31) "Participating" means an employee is currently earning service credit in the system as provided in KRS 78.615;~~and~~
- (32) "Month" means a calendar month; *and*
- (33) **"Membership date" means the date upon which the member began participating in the system as provided in KRS 78.615.**

➔Section 25. KRS 78.625 is amended to read as follows:

- (1) The agency reporting official of the county shall, by the tenth day of each month, **file at the retirement office**~~forward to the system~~ an amount equal to the aggregate amount of the employees' contributions deducted during the previous month in accordance with KRS 78.610 and the aggregate amount of the employer's contributions due for the previous month in accordance with KRS 61.565.
- (2) The agency reporting official or some other person designated by the county shall, **by the tenth day of each month, file at the retirement office**~~forward~~ a record of all contributions to the system on the forms the board prescribes.
- (3) (a) If the agency reporting official fails to **file at the retirement office**~~forward~~ all contributions **and reports** on or before the tenth day of the month following the period being reported, interest on the delinquent contributions at the actuarial rate adopted by the board compounded annually, but not less than one thousand dollars (\$1,000), shall be added to the amount due the system.
- (b) Delinquent contributions, with interest at the rate adopted by the board compounded annually, or penalties may be recovered by action in the Franklin Circuit Court against the county liable or may, at the request of the board, be deducted from any other moneys payable to the county by any department or agency of the state.
- (4) If an agency is delinquent in the payment of contributions due in accordance with any of the provisions of KRS 78.510 to 78.852, refunds and retirement allowance payments to members of this agency may be suspended until the delinquent contributions, with interest at the rate adopted by the board compounded annually, or penalties have been paid to the system.

➔Section 26. KRS 78.630 is amended to read as follows:

All of the assets of the system shall be held and invested in the county employees' retirement fund and credited, according to the purpose for which they are held, to one (1) of **three (3)**~~two (2)~~ accounts, namely, the members' contribution account,~~and~~ the retirement allowance account, **and accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, as prescribed by subsection (2)(b) of Section 22 of this Act.**

➔Section 27. KRS 78.640 is amended to read as follows:

- (1) The members' contribution account shall be the account to which all members' contributions, or contributions picked up by the employer after August 1, 1982, and interest allowances as provided in KRS 78.510 to 78.852 shall be credited, **except as provided by subsection (2)(b) of Section 22 of this Act.** From this account shall be paid the accumulated contributions of a member required to be returned to him upon withdrawal, or paid in the

event of his death before retirement. Prior to the member's retirement, death, or refund in accordance with KRS 61.625, no funds shall be made available from the member contribution account.

- (2) Each member's contribution or contribution picked up by the employer shall be credited to the individual account of the contributing member, *except as provided by subsection (2)(b) of Section 22 of this Act.*
- (3)
  - (a) Each member on June 30 of each year shall have his individual account credited with interest.
  - (b) For a member who begins participating before September 1, 2008, interest shall be credited to his individual account at a rate determined by the board but not less than two percent (2%) per annum on the accumulated contributions of the member on June 30 of the preceding fiscal year.
  - (c) For a member who begins participating on or after September 1, 2008, interest shall be credited to his or her individual account at a rate of two and one-half percent (2.5%) per annum on the accumulated contributions of the member on June 30 of the preceding fiscal year.
  - (d) The amounts of interest credited to a member's account under this subsection shall be transferred from the retirement allowance account.
- (4) Upon the retirement of a member, his accumulated contributions shall be transferred from the members' contribution account to the retirement allowance account.

➔Section 28. KRS 16.645 is amended to read as follows:

The following subjects shall be administered in the same manner subject to the same limitations and requirements as provided for the Kentucky Employees Retirement System as follows:

- (1) Cessation of membership, as provided for by KRS 61.535;
- (2) Medical examiners and hearing procedures, as provided for by KRS 61.665;
- (3) Actuarial bases, as provided for by KRS 61.670;
- (4) Duties of the employer, as provided for by KRS 61.675;
- (5) Exemption of benefits of the system for taxation, as provided for by KRS 61.690;
- (6) Retirement allowance increase, as provided for by KRS 61.691;
- (7) Calculation of retirement allowance, as provided for by KRS 61.595(3) and (4);
- (8) Beneficiaries to be designated by member, change, rights, as provided for by KRS 61.542;
- (9) Year of service credit, as provided for by KRS 61.545;
- (10) Refund of contributions, death after retirement, as provided by KRS 61.630;
- (11) Custodian of fund, payments made, when, as provided for by KRS 61.660;
- (12) Credit for service prior to membership date, as provided for by KRS 61.526;
- ~~(13) Transfer of dormant accounts, as provided for by KRS 61.626;~~
- ~~(14) Member's account, confidential, as provided for by KRS 61.661;~~
- ~~(14)(15)~~ Cessation of membership, loss of benefits, as provided for by KRS 61.550;
- ~~(15)(16)~~ Correction of errors in records, as provided for by KRS 61.685;
- ~~(16)(17)~~ Maximum disability benefit, as provided for by KRS 61.607;
- ~~(17)(18)~~ Retirement application procedure, effective retirement date, as provided for by KRS 61.590;
- ~~(18)(19)~~ Employer contributions, as provided for by KRS 61.565;
- ~~(19)(20)~~ Reinstatement of lost service credit, purchase of service credit, interest paid, and delayed contribution and installment payments, as provided for by KRS 61.552;
- ~~(20)(21)~~ Reciprocal arrangement between systems, as provided by KRS 61.680;
- ~~(21)(22)~~ Refund of contributions, conditions, as provided by KRS 61.625;
- ~~(22)(23)~~ Hospital and medical insurance plan, as provided by KRS 61.702;

- ~~(23)~~~~(24)~~ Death benefit, as provided by KRS 61.705;
- ~~(24)~~~~(25)~~ Disability retirement allowance, reduction, and discontinuance, as provided by KRS 61.615;
- ~~(25)~~~~(26)~~ Service credit, Armed Forces, as provided by KRS 61.555;
- ~~(26)~~~~(27)~~ Reinstated employee, contributions on creditable compensation, as provided for by KRS 61.569;
- ~~(27)~~~~(28)~~ Statement to be made under oath, good faith reliance, as provided for in KRS 61.699;
- ~~(28)~~~~(29)~~ Retirement of persons in hazardous positions, as provided for by KRS 61.592;
- ~~(29)~~~~(30)~~ Direct deposit of recipient's retirement allowance as provided in KRS 61.623;
- ~~(30)~~~~(31)~~ Purchase of service credit effective July 1, 2001, as provided in KRS 61.5525;
- ~~(31)~~~~(32)~~ Payment of small amounts upon death of member, retiree, or recipient without formal administration of the estate as provided in KRS 61.703;
- ~~(32)~~~~(33)~~ Suspension of retirement payments on reemployment, reinstatement, recomputation of allowance, waiver of provisions in certain instances, reemployment in a different position, as provided for by KRS 61.637; and
- ~~(33)~~~~(34)~~ Medical examination and financial review after disability retirement, staff review, as provided in KRS 61.610.

➔Section 29. KRS 78.545 is amended to read as follows:

The following matters shall be administered in the same manner subject to the same limitations and requirements as provided for the Kentucky Employees Retirement System as follows:

- (1) Cessation of membership, conditions, as provided for by KRS 61.535;
- (2) Statement of member and employer, as provided for by KRS 61.540;
- (3) Beneficiary to be designated by member, change, rights, as provided for by KRS 61.542;
- (4) Service credit determination, as provided for by KRS 61.545;
- (5) Cessation of membership, loss of benefits, as provided for by KRS 61.550;
- (6) Service credit, Armed Forces, as provided for by KRS 61.555;
- (7) Normal and early retirement eligibility requirements, as provided for by KRS 61.559;
- (8) Retirement allowance increases as provided for by KRS 61.691;
- (9) Retirement application procedure, effective retirement date, as provided for by KRS 61.590;
- (10) Disability retirement, conditions, as provided for by KRS 61.600;
- (11) Disability retirement, allowance, as provided for by KRS 61.605;
- (12) Medical examination after disability retirement, as provided for by KRS 61.610;
- (13) Disability retirement allowance, reduction, as provided for by KRS 61.615;
- (14) Determination of retirement allowance, as provided for by KRS 61.595;
- (15) Refund of contributions, conditions, as provided for by KRS 61.625;
- (16) Refund of contributions, death after retirement, as provided for by KRS 61.630;
- (17) Optional retirement plans, as provided for by KRS 61.635;
- (18) Suspension of retirement payments on reemployment, reinstatement, as provided for by KRS 61.637;
- (19) Death before retirement, beneficiary's options, as provided for by KRS 61.640;
- (20) Board of trustees, conflict of interest, as provided for by KRS 61.655;
- (21) Custodian of funds, payments made, when, as provided for by KRS 61.660;

- (22) Medical examiners and hearing procedures, as provided for by KRS 61.665;
- (23) Actuarial bases, as provided for by KRS 61.670;
- (24) Employer's administrative duties, as provided for by KRS 61.675;
- (25) Correction of errors in records, as provided for by KRS 61.685;
- (26) Exemptions of retirement allowances, as provided for by KRS 61.690;
- (27) Credit for service prior to membership date, as provided for by KRS 61.526;
- (28) Creditable compensation of fee officers, as provided for by KRS 61.541;
- ~~(29) Transfer of dormant accounts, as provided for by KRS 61.626;~~
- ~~(30)~~ Members' account, confidential, as provided for by KRS 61.661;
- ~~(30)~~~~(31)~~ Retirement plan for employees determined to be in a hazardous position, as provided for by KRS 61.592;
- ~~(31)~~~~(32)~~ Maximum disability benefit, as provided for by KRS 61.607;
- ~~(32)~~~~(33)~~ Consent of employees to deductions and reciprocal arrangement between systems, as provided for by KRS 61.680;
- ~~(33)~~~~(34)~~ Employer contributions, as provided for by KRS 61.565;
- ~~(34)~~~~(35)~~ Recontribution and delayed contribution payments, purchase of service credit, interest, and installment payments, as provided for by KRS 61.552;
- ~~(35)~~~~(36)~~ Hospital and medical insurance plan, as provided by KRS 61.702;
- ~~(36)~~~~(37)~~ Death benefit, as provided by KRS 61.705;
- ~~(37)~~~~(38)~~ Reinstated employee, contributions on creditable compensation, as provided for by KRS 61.569;
- ~~(38)~~~~(39)~~ Statement to be made under oath, good faith reliance, as provided for in KRS 61.699;
- ~~(39)~~~~(40)~~ Disability procedure for members in hazardous positions as provided for in KRS 16.582;
- ~~(40)~~~~(41)~~ Direct deposit of recipient's retirement allowance as provided for in KRS 61.623;
- ~~(41)~~~~(42)~~ Death or disability from a duty-related injury as provided in KRS 61.621;
- ~~(42)~~~~(43)~~ Purchase of service credit effective July 1, 2001, as provided in KRS 61.5525; and
- ~~(43)~~~~(44)~~ Payment of small accounts upon death of member, retiree, or recipient without formal administration of the estate as provided in KRS 61.703.

➔Section 30. The following KRS section is repealed:

61.626 Transfer of contributions -- Conditions.

**Signed by the Governor March 24, 2009.**

## CHAPTER 78

### (HB 423)

AN ACT relating to the budget of the Commonwealth.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 48.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Account" is a technical accounting term meaning a formal record in which related transactions and events, (i.e., expenditures, receipts, encumbrances, and inter-account charges or credits) which occur during a specific period of time, are summarized and accumulated.

- (2) "Activities" means those actions or services performed by a budget unit which depict in a quantitative manner the fulfillment of lawful purposes.
- (3) Appropriation-related terms are defined for procedures prescribed by this chapter as follows:
- (a) "Appropriation" means an authorization by the General Assembly to expend ~~from public funds,~~ a sum of money not in excess of the sum specified, for the purposes specified in the authorization and under the procedure prescribed in this chapter;
  - (b) "Appropriation provision" means a section of any enactment by the General Assembly which is not provided for by this chapter and which authorizes the expenditure of ~~public~~ funds other than by a general appropriation bill; *and*
  - (c) "General appropriation bill" means an enactment by the General Assembly that authorizes the expenditure of ~~public~~ funds in ~~a[n executive, judicial, or legislative]~~ branch budget bill as provided for by this chapter.
- (4) ***"Biennial highway construction plan" means the specifically identified individual transportation projects or portions thereof identified for funding during the upcoming biennium, which correspond to the first two (2) years of the six (6) year road plan.***
- (5) "Budget" means the complete financial plan for each fiscal year contained in a branch budget bill provided for by this chapter.
- ~~(5)~~ "Branch budget bill" *or "branch budget"* means an enactment by the General Assembly which provides appropriations and establishes fiscal policies and conditions for the biennial financial plan ***for the judicial branch, the legislative branch, and the executive branch, which shall include a separate budget bill for the Transportation Cabinet***~~of each branch of government.~~
- ~~(6)~~ "Branch budget recommendation" means the recommendations *made* to the General Assembly ~~by:~~
- (a) The Governor for the executive branch, ***including a separate recommendation for the Transportation Cabinet;*** ~~and for fiscal matters related to the function of the government of the Commonwealth;~~
  - (b) The Chief Justice for the judicial branch; ~~and~~
  - (c) The Legislative Research Commission for the legislative branch~~, accompanied by an estimate of the receipts and expenditures for each branch and accompanying explanations provided for by this chapter for the next two (2) fiscal years.~~
- ~~(7)~~ "Budget unit request" means a detailed statement of the financial requirements of a budget unit by principal budget class, and an estimate of its receipts and expenditures for the next two (2) fiscal years, with the accompanying explanations provided for by this chapter.
- ~~(8)~~ "Budget unit" or "appropriation unit" means any subdivision of any branch of government, however designated in any branch budget bill.
- ~~(9)~~ "Capital outlay" means the exchange of values involved in acquiring lands, buildings, equipment, or other permanent properties, or in their construction, development, or permanent improvement.
- (11) ***"Consensus forecasting group" means the group established by Section 4 of this Act that is responsible for developing consensus revenue forecasts for the Commonwealth.***
- ~~(10)~~ "Disbursement" means cash actually paid out for any purpose.
- ~~(11)~~ "Employee" means the lawful incumbent of a position.
- (13) ***"Enacted estimates" means the revenue estimates used by the General Assembly as the basis for appropriations made in the enacted branch budget bills.***
- ~~(12)~~ "Expenditure" means cash actually paid out or an exchange of value for any purpose.
- ~~(13)~~ "Fund" means an independent fiscal and accounting entity with a self-balancing set of accounts recording cash or other resources or both together with all related liabilities, obligations, reserves, and equities which are segregated for the purpose of carrying on specific activities in accordance with legal restrictions or other limitations, to include:

- (a) "General Fund." This fund shall consist of all moneys, not otherwise restricted, available for the general operations of state government.
  - (b) "Bond Debt Related Fund." This fund shall consist of all outstanding bonded debt liability and related funds of state government, including all revenue bonds issued by or approved by the State Property and Buildings Commission. Accounts necessary to assure integrity of trust indentures shall be maintained. Funds appropriated for debt service shall be allotted to these accounts and any excess of appropriation over net requirements for principal, interest, and reserves for any issue shall lapse to the surplus account of the general fund if general funds are a part of the appropriation for that budget unit.
  - (c) "Capital Construction Fund." This fund shall consist of moneys appropriated under the provision of KRS 45.750 to 45.800 for capital construction projects, except road construction projects, for all budget units of state government.
  - (d) "Federal Fund." This fund shall include all receipts from the federal government for any purpose.
  - (e) "Fiduciary Fund." This fund shall consist of moneys held by a budget unit in a trustee capacity.
  - (f) "Restricted Fund." This fund shall consist of budget unit receipts restricted as to purpose by statute.
  - (g) "Road Fund." This fund shall consist of money derived from excise or license taxation relating to gasoline and other motor fuels, and moneys derived from fees, excise or license taxation relating to registration, operation, or use of vehicles for use on public highways. A separate record of each source of receipt within this fund group shall be maintained.
- (16)~~(14)~~ "Principal budget class" includes the following:
- (a) "Capital outlay" means the exchange of values involved in acquiring lands, buildings, or other permanent properties, or in their construction, development, or permanent improvement estimated to cost less than ~~six<sup>four</sup>~~ hundred thousand dollars ~~(\$600,000)~~~~(\$400,000)~~, and items of equipment or other capital items estimated to cost less than ~~two<sup>one</sup>~~ hundred thousand dollars ~~(\$200,000)~~~~(\$100,000)~~.
  - (b) "Debt service" means the amount of money required to pay the interest, principal, and required contributions to accumulate moneys for future retirement of lawfully incurred debt.
  - (c) "Grants, loans, or benefits" means expenditures for any grant, aid, loan, or relief payment to individuals, organizations, or jurisdictions not otherwise classified pursuant to this chapter.
  - (d) "Operating expenses" means expenditures directly attributable to the operation of state government not otherwise classified pursuant to this chapter.
  - (e) "Personnel costs" means the salaries, wages, benefits (including but not limited to, employer share of FICA, retirement contributions, insurance, unemployment insurance, workers' compensation), and increments of all officers and employees, and payment to persons awarded personal service contracts.
- (17)~~(15)~~ "Receipts" includes the following:
- (a) "Nonrevenue receipts" means values accruing that either decrease an asset or create a liability.
  - (b) "Operating receipts" means cash received by a budget unit for services rendered, or from the sale of materials, goods, or supplies created by the budget unit or of items held for resale.
  - (c) "Revenue receipts" means values accruing as a result of taxation or revenues, or both, and without resultant increase in liabilities or decrease in assets, whether such values are represented by cash actually received or by amounts due and payable, or partly by each.
- (18) ***"Revenue shortfall" means either:***
- (a) ***An official revenue estimate for either the general fund or road fund that is less than the enacted estimates; or***
  - (b) ***Actual receipts at the end of the fiscal year for either the general fund or road fund that are less than the enacted estimates, as determined by the Office of State Budget Director.***
- (19) ***"Surplus" means the undesignated fiscal year ending fund balance for the general fund or road fund, reduced by amounts designated to carry forward for appropriation in a subsequent fiscal year.***

(20) "Six (6) year road plan" means the road plan developed under Section 20 of this Act.

(21)~~(16)~~ "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

➔Section 2. KRS 48.050 is amended to read as follows:

The head of each budget unit shall submit its budget unit request to the *Office of State Budget Director*~~Finance and Administration Cabinet~~, in the case of the executive branch, to the Chief Justice, in the case of the judicial branch, to the director of the Legislative Research Commission, in the case of the legislative branch; and to the Legislative Research Commission, not later than November 15 of each odd-numbered year.

➔Section 3. KRS 48.110 is amended to read as follows:

Each branch budget recommendation shall contain a complete financial plan for the branch of government for each of the next two (2) fiscal years. Each branch budget recommendation shall include:

- (1) A budget message signed by:
  - (a) The Governor *for the executive branch*; ~~;~~
  - (b) The Chief Justice *for the judicial branch*; ~~and~~ ~~;~~ ~~or~~
  - (c) The co-chairmen of the Legislative Research Commission for *the legislative branch*; ~~their respective branches of government.~~
- (2)
  - (a) Statements of income and receipts for ~~each of~~ the two (2) fiscal years last concluded, and the estimated income and receipts, for each budget unit of the branch of government *for* ~~;~~ ~~of~~ the current fiscal year and ~~of~~ each of the next two (2) fiscal years.
  - (b) The statements of income and estimated income shall be itemized by budget *unit* ~~units~~ and *fund* ~~funds~~, ~~by sources~~, and shall show separately receipts from:
    1. Current income; ~~receipts from~~
    2. Refunds and reimbursements of expenditures; ~~receipts from~~
    3. *The* sale of assets; ~~;~~ and
    4. Receipts on account of the income of prior years; ~~all detailed by sources.~~
  - (c) Existing sources of income and receipts shall be analyzed as to their equity, productivity and need for revision, and any proposed new sources of income or receipts shall be explained; ~~;~~
- (3) A statement of the surplus in any account and in any special fund of the branch of government. If a surplus exists in any account of the branch of government the statement shall show the excess of all current assets over all current liabilities as of the beginning of each of the two (2) fiscal years last concluded, and all changes in these accounts during each of such two (2) fiscal years; ~~;~~
- (4) A statement as of the close of the last completed fiscal year and as of the close of the current fiscal year showing, for each budget unit ~~of the branch of government~~ the total funded debt, the value of sinking fund assets, the net funded debt, the floating liabilities as of the end of the current fiscal year, and the total debt as of the close of the last completed fiscal year and as of the close of the current fiscal year; ~~;~~
- (5) Summary and detailed comparative statements of expenditures itemized by budget unit for each of the two (2) fiscal years last concluded and requests for appropriations by funds or accounts, the budget of the current year, ~~and the requests of each budget unit~~ and the recommendations for appropriations for each of the next two (2) fiscal years. Following the lists of actual and proposed expenditures of each budget unit there shall be a detailed explanation of the actual and proposed expenditures, to include activities, beneficiaries and expected results of the programs or services of the budget units; ~~;~~
- (6) A draft of the proposed branch budget bill containing:
  - (a) Recommendations of the branch of government for appropriations for the next two (2) fiscal years, and drafts of such revenue and other acts as may be recommended for *implementing* ~~putting into effect~~ the proposed financial plan; ~~The recommended appropriations for ordinary recurring expenses shall be~~

~~itemized by budget units, and the amount of each of such recommended appropriation shall be the total of the recommended amounts for the budget units.]~~

- (b) Recommended appropriations for extraordinary expenses and capital outlays, **which** shall be itemized in the proposed branch budget bill for the branch by budget unit.~~and] The title of each budget unit shall be~~~~so] worded~~~~as] to limit each appropriation to the specific use or purpose intended;~~~~The recommended appropriation for each budget unit shall be specified in a distinct and separate section of the proposed branch budget bill for the branch.]~~
- (c) *A plan for the reduction of the branch budget, if there is a revenue shortfall of five percent (5%) or less in the general fund or road fund. In recommending budget reductions, the Governor, the Chief Justice, and the Legislative Research Commission shall not recommend universal percentage reductions, but shall weigh the needs of all budget units and shall strive to protect the highest possible level of service in their respective branches. Services which are not essential to constitutional functions shall be subject to reduction. Transfer of funds may be authorized by the budget reduction plan;*
- (d) *A plan for the expenditure of a general fund or road fund surplus of up to two and one-half percent (2.5%).*
1. *The plan shall include provisions for the expenditure of a surplus, and may provide for additional moneys for nonrecurring expenditures for which an appropriation was not made in a branch budget bill, or for a program or service authorized by law for which an appropriation was not made, or which was not fully funded.*
  2. *In lieu of recommending the appropriation of funds, the plan may instead recommend the retention of surplus funds in the surplus account of the general fund or road fund for investment until appropriated by the General Assembly;*
- (e) *A recommended state capital projects program and a recommended program for the purchase of major items of equipment.*
1. *The recommended capital construction program shall include:*
    - a. *A complete list and summary description of each specific capital construction project recommended for funding during the biennium; and*
    - b. *For each project:*
      - i. *The agency and purpose for which it will be used;*
      - ii. *The justification for the project;*
      - iii. *Its estimated completion date;*
      - iv. *The total estimated cost of completing the project;*
      - v. *The estimated cost of the project during the biennium;*
      - vi. *The recommended sources of funds for the entire project; and*
      - vii. *The dollar amounts recommended for appropriation and the dollar amounts, listed by source, that are anticipated from every other source of funds for the biennium.*
  2. *All information required by subparagraph 1. of this paragraph shall be included in each branch budget recommendation. Each branch budget bill shall contain only a complete list of the specific capital construction projects recommended for funding during the biennium and, for each project, the information specified in subparagraph 1.b.v., vi., and vii. of this paragraph.*
  3. *A report which details the effect of recommended new debt on the debt position of the Commonwealth shall be submitted at the same time the recommended capital program is submitted. Information shall be presented separately, and in total, for the general fund, road fund, and any affected restricted fund account.*
  4. *Information in the report shall include but not be limited to the following:*

- a. *Debt service on existing appropriation-supported debt, as a percentage of anticipated total revenues;*
  - b. *Debt service on existing appropriation-supported debt, as a percentage of anticipated available revenues;*
  - c. *The sum of debt service on existing appropriation-supported debt and debt service on recommended new appropriation-supported debt, as a percentage of anticipated total revenues;*
  - d. *The sum of debt service on existing appropriation-supported debt and debt service on recommended new appropriation-supported debt, as a percentage of anticipated available revenues;*
  - e. *The sum of debt service on existing appropriation-supported debt and debt service on recommended new appropriation-supported debt, as a percentage of estimated state total personal income; and*
  - f. *The sum of existing appropriation-supported debt and recommended new appropriation-supported debt, as a percentage of estimated state total personal income.*
5. *The recommended program for the purchase of major items of equipment submitted by the head of each branch of government shall include:*
- a. *A complete list and summary description of each specific major item of equipment recommended for purchase during the biennium; and*
  - b. *For each major item of equipment:*
    - i. *The agency and purpose for which it will be used;*
    - ii. *The justification for the purchase;*
    - iii. *The estimated cost of the item, including ancillary expenses and any expenses necessary to make the equipment functional and operational;*
    - iv. *The recommended sources of funds; and*
    - v. *The dollar amounts recommended for appropriation and anticipated from every other source of funds for the purchase.*
6. *All information required by subparagraph 4. of this paragraph shall be included in the executive branch budget recommendation. The branch budget bill for the executive branch shall contain only a complete list of each specific item of major equipment recommended for purchase during the biennium and, for each item, the information specified in subparagraph 5.b.iii., iv., and v. of this paragraph;*
- (f) *The branch budget recommendation for the Transportation Cabinet shall include the following information:*
- 1. *A separate branch budget bill;*
  - 2. *A recommended biennial highway construction plan, which shall be presented as a separate bill, and which shall include a list of individual transportation projects included in the last four (4) years of the six (6) year road plan, not to exceed ten percent (10%) of the recommended biennial highway construction appropriation, which can be advanced if:*
    - a. *Additional funds are received; and*
    - b. *All projects included in the biennial highway construction plan have been advanced or completed to the extent possible; and*
  - 3. *The six (6) year road plan. The Governor shall have ten (10) working days after submission of the branch budget recommendation and the recommended biennial highway construction plan to submit the six (6) year road plan. The six (6) year road plan shall be submitted in a form and format cooperatively developed by the Transportation Cabinet and the General Assembly and approved by the Legislative Research Commission; and*

- (g) *In the executive branch budget recommendation, as a separate section, an amount sufficient to meet unexpected contingencies or emergencies, including but not limited to natural or man-made disasters, civil disorders, court orders requiring or resulting in the expenditure of state funds, or other related causes.*
1. *The amount shall be based on the nature, type, and frequency of named categories of events which may, from past experience, be reasonably anticipated.*
  2. *This portion of the budget recommendation shall detail similar incidents and the nature and amount of the expenditures for each during the ten (10) years immediately preceding.*

The total amount of appropriations recommended from any fund shall not exceed the cash resources estimated to be available and to become available to meet expenditures under ~~the [such]~~ appropriations; ~~[-]~~

- (7) A certificate of the branch of government as to the accuracy of the statements of financial condition, of income and receipts, and of expenditures; **and**.
- (8) Such other information as is deemed desirable, or is required by law or regulation.

➔Section 4. KRS 48.115 is amended to read as follows:

- (1) ~~[Except as provided for in subsection (4) of this section,]~~ ~~The [detailed]~~ revenue estimates for the general fund and the road fund required by KRS 48.120 shall be based on a consensus revenue forecast. The **planning report, preliminary revenue estimates, and official revenue estimates required by Section 5 of this Act** ~~[consensus revenue forecast]~~ shall be developed by the consensus forecasting group. The members of the consensus forecasting group shall be jointly selected by the state budget director and the Legislative Research Commission. The members shall be knowledgeable about the state and national economy and the revenue and financial conditions of the Commonwealth.
- (2) ~~If, after the revenue estimates made as required under KRS 48.120,~~ the Legislative Research Commission or state budget director determines that a revision to the **official** revenue estimates is needed, the Legislative Research Commission or state budget director shall request a revision from the consensus forecasting group. The revised revenue estimates shall become the official revenue estimates.
- (3) **The enacted budget reduction plan required by Section 6 of this Act shall be implemented only:**
  - (a) *Upon the issuance of an official revenue estimate from the consensus forecasting group reflecting a revenue shortfall of five percent (5%) or less; or*
  - (b) *At the end of a fiscal year, upon the existence of an actual revenue shortfall of five percent (5%) or less, as determined by the Office of State Budget Director.*
- (4) The state budget director shall coordinate with the Department of Revenue and the Transportation Cabinet to ensure that the financial and revenue data required for the forecasting process is made available to the consensus forecasting group.
- (5) ~~[(4)]~~ Staff for the consensus forecasting group shall be provided by the Legislative Research Commission.

➔Section 5. KRS 48.120 is amended to read as follows:

- (1) **By August 15 of each odd-numbered year, the Office of State Budget Director, in conjunction with the consensus forecasting group, shall provide to each branch of government a budget planning report. The budget planning report shall include:**
  - (a) *A baseline analysis and projections of economic conditions and outlook;*
  - (b) *Any potential consequences of the analysis and projections for the Commonwealth's fiscal condition;*
  - (c) *The revenue estimates and implications for the general fund and road fund for the current fiscal year and next four (4) fiscal years; and*
  - (d) *Projections of personal income, employment, and economic indicators that reflect economic conditions.*
- (2) By October 15 of each odd-numbered year, the Office of State Budget Director shall provide to each branch of government ~~the~~ preliminary ~~[detailed]~~ revenue estimates made **by the consensus forecast group** ~~in accordance with the provisions of KRS 48.115]~~ for the general fund and road fund for the current and next two

(2) fiscal years, including explanatory statements, and a comparative record of the actual revenues of these funds for each of the last two (2) years concluded.

~~(3)(2)~~ On or before the fifteenth legislative day, the Office of State Budget Director shall certify and present to the General Assembly the *official*~~[final detailed]~~ revenue estimates made *by the consensus forecasting group for the general fund and road fund for the current and next two (2) fiscal years*~~[in accordance with the provisions of KRS 48.115 for these funds].~~

~~(4)(3)~~ Appropriations made in the branch budget bills enacted for each branch of government shall be based upon the *official* revenue estimates presented to the General Assembly by the Office of State Budget Director under subsection (3)~~(2)~~ of this section, as modified by~~[the appropriations committees of]~~ the General Assembly.

(5) *The enacted estimates shall become the official revenue estimates of the Commonwealth upon the branch budget bills becoming law, and shall remain the official revenue estimates of the Commonwealth until revised by the consensus forecasting group as provided in Section 4 of this Act.*

➔Section 6. KRS 48.130 is amended to read as follows:

(1) *The General Assembly shall include in each enacted branch budget bill a budget reduction plan for a revenue shortfall in the general fund or road fund of five percent (5%) or less. The budget reduction plan shall direct how budget reductions shall be implemented if there is a revenue shortfall of five percent (5%) or less*~~[branch budget recommendation submitted by each branch of government shall include a plan for the reduction of the respective budget recommendations, by budget unit, if projected or actual tax receipts accruing to the general fund or road fund are five percent (5%) or less than the revenue estimates for these funds as determined under subsection (3) of KRS 48.120].~~

~~(2)(a)~~ In recommending budget reductions, the Governor, the Chief Justice, and the Legislative Research Commission shall not recommend universal percentage reductions, but shall weigh the needs of all budget units and shall strive to protect the highest possible level of service in their respective branches. Services which are not essential to constitutional functions shall be subject to reduction. Transfer of funds may be authorized by the budget reduction plan;

~~(b)~~ In recommending budget reductions for the executive branch, the budget reduction plan provided for by subsection (1) of this section shall comply with the provisions of KRS 18A.1132;

~~(c)~~ A layoff of state employees in the executive branch under the budget reduction plan enacted by the General Assembly shall comply with the provisions of KRS 18A.1132~~; and~~

~~(d)~~ A layoff of state employees in the executive branch required by an actual or projected deficit in tax receipts contemplated by subsection (5) of this section shall comply with the provisions of KRS 18A.1132.

(3) *Any revenue shortfall in the general fund or road fund of greater than five percent (5%) shall require action by the General Assembly*~~[The plan shall be enacted as modified by the General Assembly in each branch budget bill].~~

(4) *Upon the issuance of an official revenue estimate by the consensus forecasting group reflecting a revenue shortfall in the general fund or road fund, or upon the existence of an actual revenue shortfall in the general fund or road fund at the close of a fiscal year as determined by the Office of State Budget Director*~~[Based upon the information provided in KRS 48.400 and in the event of an actual or projected deficit in tax receipts provided for by this section],~~ the Office of State Budget Director shall notify all branches of government. *If the revenue shortfall is five percent (5%) or less, the following actions shall be taken:*

(a) *The unappropriated balance of funds in the surplus accounts of the general fund or road fund shall first be used to meet the shortfalls in those respective funds; and*

(b) *If the amounts described in paragraph (a) of this subsection are insufficient to address the revenue shortfall, the enacted budget reduction plan included in each branch budget bill shall be implemented*~~[funds that have accrued to the surplus accounts of the general or road funds are not sufficient to meet these deficits, the allotments to the respective branches shall be reduced according to the reduction provisions embodied in the branch budget bill, and the Governor, the Chief Justice, and~~

~~the Legislative Research Commission shall automatically implement budget reductions for their respective branches according to the reduction provisions embodied in the branch budget bill; and~~

- (b) ~~In the event funds that have accrued to the surplus accounts of the general or road funds are sufficient to meet these deficits, transfers from these surplus accounts shall be made, as appropriate, and the budget reduction provisions embodied in the branch budget bill shall not be implemented.~~
- (5) ~~Based upon the information provided in KRS 48.400 and in the event of an actual or projected deficit in tax receipts of five percent (5%) or less, the Governor, the Chief Justice, and the Legislative Research Commission shall implement budget reductions for their respective branches consistent with the provisions of the enacted branch budget bills.~~
- (5)~~(6)~~ The budget reduction plan *for each branch of government may*~~shall~~ provide that the annual increment granted state employees under KRS 18A.355 shall be reduced as provided by KRS 18A.355. Any~~such~~ reduction of the annual increment shall be uniform for all employees.
- (6) *No budget reduction action shall be taken by any branch head in excess of the actual or projected deficit.*
- (7) If general fund or road fund tax receipts increase over the *revenues estimated in the official revenue estimate that resulted in reductions*~~estimated deficits~~, then services *may*~~shall~~ be restored in the reverse order of the reduced services.
- ~~(8) This section shall not preclude the General Assembly, in regular or special session, from amending a branch budget bill requiring budget reductions nor shall it preclude the Governor from calling a special session of the General Assembly at any time the budget reduction plan is in effect.~~
- ~~(9) No budget reduction action shall be taken by any branch head in excess of the actual or projected deficit.~~

➔Section 7. KRS 48.140 is amended to read as follows:

- (1)~~(1)~~ The branch budget recommendation submitted by the Governor, the Chief Justice, and the Legislative Research Commission shall include a plan for the expenditure of general or road fund tax receipts up to two and one-half percent (2.5%) in excess of the tax receipts estimates for the funds as determined by subsection (3) of KRS 48.120.
- (2)~~(2)~~ The plan shall contain provisions for the expenditure of such excess general fund and road fund tax receipts. This plan shall provide for additional moneys for nonrecurring expenditures for which an appropriation was not made in a branch budget bill, or for a program or service authorized by law for which an appropriation was not made or which program was not fully funded. No expenditure shall be recommended for any other purpose.
- (3)~~(3)~~ In lieu of recommending the expenditure of such sums, the Governor, the Chief Justice, or the Legislative Research Commission, may elect to recommend the return of such sums or any portion thereof to the surplus account of the general fund or road fund for investment until such time as it is appropriated by the General Assembly.
- (4)~~(4)~~ *The General Assembly shall include in each enacted branch budget bill a plan for the expenditure*~~expenditures~~ *of a general fund or road fund*~~such~~ surplus~~funds shall be enacted as modified by the General Assembly in each branch budget bill.~~
- (2)~~(5)~~ *If there is*~~In the event of~~ a surplus~~in tax receipts provided for by this section~~, the *Office of State Budget Director*~~Finance and Administration Cabinet~~ shall notify all branches of government.
- (3)~~(6)~~ Except as provided in KRS 48.705, any *surplus in the* general or road fund~~receipts~~ in excess of two and one-half percent (2.5%) of the *enacted*~~tax revenue~~ estimates~~determined under subsection (3) of KRS 48.120, or in excess of any appropriation made in a branch budget bill applying such receipts~~ shall not be expended but shall accrue to the surplus account of the general fund or road fund for investment until appropriated by the General Assembly.
- (4)~~(7)~~ Unless required by the budget reduction provisions in a branch budget bill, no funds shall be transferred from one budget unit to another budget unit.
- (5)~~(8)~~ Surplus funds in any account, unless a statute requires otherwise, shall lapse to the surplus account of the general fund for investment until appropriated by the General Assembly.
- (6)~~(9)~~ Funds in the surplus account of the general fund may be used for current expenditures as authorized by the budget reduction provisions of a branch budget bill.

➔Section 8. KRS 48.150 is amended to read as follows:

- (1) *As used in this section, "unexpected emergencies and contingencies" includes but is not limited to natural or man-made disasters, civil disorders, court orders requiring or resulting in the expenditure of state funds, or other related causes.*~~[Each branch of government shall submit in its budget recommendation, as a separate portion thereof by budget unit, a request for moneys sufficient to meet unexpected contingencies or emergencies including but not limited to natural or man-made disasters, civil disorders, court orders requiring or resulting in the expenditure of state funds or other related causes].~~
- (2) *Any*~~[The amount shall be based on the nature, type, and frequency of named categories of events which may, from past experience, be reasonably anticipated.~~
- ~~(3) This portion of the budget recommendation shall detail similar incidents and the nature and amount of the expenditures for each during the ten (10) years immediately preceding.~~
- ~~(4) These~~ appropriations *made in an enacted branch budget bill to address unexpected emergencies and contingencies:*
  - (a) Shall not be expended for contingencies relating to capital construction projects or major items of equipment as defined by KRS 45.770; *and*
  - (b) ~~[(5) Amounts appropriated under this section]~~ Shall not be expended unless appropriations made for the same or similar purposes have been exhausted.
- ~~(3) [(6)]~~ Each branch of government shall report expenditures *for unexpected emergencies and contingencies, whether paid from appropriated funds or as a necessary governmental expenditure,*~~[under this section]~~ to the standing appropriations committees of the General Assembly or the Interim Joint Committee on Appropriations and Revenue as appropriate.

➔Section 9. KRS 48.210 is amended to read as follows:

From the time of the submission of the budget recommendation of each branch of government to the *General Assembly*~~[House of Representatives]~~ until the enactment of all branch budget bills, representatives of each branch of government shall be at the disposal of the General Assembly and its appropriations committees and shall devote as much of their time as may be required to the work of those committees, under the direction of their respective chairmen. The Finance and Administration Cabinet *and the Office of State Budget Director* shall provide such additional assistance to each branch of government as may be required.

➔Section 10. KRS 48.300 is amended to read as follows:

- (1) (a) The financial plan for each fiscal year as presented in ~~the~~<sup>a</sup> branch budget recommendation shall be adopted, with *any*~~[such]~~ modifications~~[as are]~~ made by the General Assembly, by the passage of a *branch* budget bill *for each branch of government*, and *any*~~[such]~~ revenue and other acts as~~[are]~~ necessary~~[for the purpose]~~.
- (b) *With regard to the Transportation Cabinet, the General Assembly shall:*
  1. *Enact, as a separate bill, a branch budget for the Transportation Cabinet;*
  2. *Enact, as a separate bill, the biennial highway construction plan, as amended by the General Assembly, including identification of projects from the last four (4) years of the six (6) year road plan that may be moved forward, and the conditions and requirements under which the identified projects may be moved forward; and*
  3. *Adopt the last four (4) years of the six (6) year road plan, as amended by the General Assembly, as a joint resolution.*
- (2) Prior to the passage of a branch budget bill and any other acts necessary, the appropriations committees of the General Assembly shall prepare a budget memorandum *for each branch of government*. The budget memorandum shall enumerate the changes made by the appropriations committees ~~to~~<sup>in</sup> a branch budget recommendation, and shall explain such changes in detail sufficient to convey the intent of the appropriations committees.
- (3) In administering the provisions of a branch budget bill, a branch head shall interpret provisions of the branch budget bill in conformity with the budget memorandum.

➔Section 11. KRS 48.315 is amended to read as follows:

- (1) The General Assembly may provide in a budget bill for the transfer to the general fund for the purpose of the general fund all or part of the agency funds, special funds, or other funds established under the provisions of KRS 15.430; 21.347; 21.540; 21.560; 42.500; 47.010; 48.010(15)(13)(g); 56.100; 61.470; 64.345; 64.350; 64.355; 95A.220; 136.392; 138.510; 161.420; 161.430; 164A.020; 164A.110; 164A.800; 164A.810; 216A.110; 230.218; 230.400; 230.770; 248.540; 248.550; 278.130; 278.150; 286.1-485; 304.35-030; 311.450; 311.610; 312.019; 313.350; 314.161; 315.195; 316.210; 317.530; 317A.080; 319.131; 320.360; 321.320; 322.290; 322.330; 322.420; 323.080; 323.190; 323.210; 323A.060; 323A.190; 323A.210; 324.286; 324.410; 325.250; 326.120; 327.080; 330.050; 334.160; 334A.120; 335.140; 342.122; 342.480, etc.
- (2) The transfer of moneys from the agency funds, special funds, or other funds to the general fund provided for in subsection (1) of this section shall be for the period of time specified in the budget bill.
- (3) Any provisions of any statute in conflict with the provisions of subsections (1) and (2) of this section are hereby suspended or modified. Any suspension or modification shall not extend beyond the duration of the budget bill.

➔Section 12. KRS 48.400 is amended to read as follows:

- (1) The Office of State Budget Director shall continuously monitor the financial situation of the Commonwealth. Based upon reports from budget units and its own estimates, the office shall no later than the tenth day of each month or more often if necessary, report to the Governor, Chief Justice, and the Legislative Research Commission on the financial condition of the Commonwealth and its budget units.
- (2) Within thirty (30) days of the close of each fiscal quarter, the state budget director shall report to the head of each branch budget the actual revenue receipts from the just-concluded quarter, as well as the projected revenue receipts for the next three (3) fiscal quarters. The report shall include a comparison with the *enacted estimates* ~~estimated revenue receipts upon which the branch budget bills were developed pursuant to KRS 48.120~~ and shall note any potential consequences to the Commonwealth's fiscal condition as a result of ~~actual or projected~~ revenue receipts that differ from those used in the *enacted estimates* ~~development of the branch budget bills~~.
- (3) ~~If~~ ~~in the event~~ there is an actual or anticipated surplus or decrease in total estimated tax receipts, as *reflected in the report required by* ~~determined under KRS 48.120(3) and~~ subsection (2) of this section, immediate notification shall be given to all branches of government.

➔Section 13. KRS 48.500 is amended to read as follows:

- (1) Subject to the provisions of this section, when the General Assembly is not in session, all questions that arise as to the meaning of items in a branch budget bill shall be decided by the Finance and Administration Cabinet *for the executive branch budget bill and the Transportation Cabinet budget bill, and* ~~and~~ by the Chief Justice, and by the Legislative Research Commission for their respective branches of government.
- (2) A decision made under subsection (1) of this section shall conform to the appropriate budget memorandum provided for by KRS 48.300.
- (3) The secretary of the Finance and Administration Cabinet, the Chief Justice, and the Legislative Research Commission shall transmit decisions made under subsection (1) of this section to the Interim Joint Committee on Appropriations and Revenue of the Legislative Research Commission and shall include, in detail, the reasons for such decisions.
- (4) If the Interim Joint Committee on Appropriations and Revenue disapproves a decision made under this section, the decision shall not be implemented unless it is:
  - (a) Revised to comply with the objections of the committee; or
  - (b) The committee is informed, in writing, in detail, within thirty (30) days of the committee's disapproval, that a determination has been made not to comply with the objections of the committee.

➔Section 14. KRS 48.600 is amended to read as follows:

- (1) *If an official revenue estimate is issued reflecting a revenue shortfall in the general fund or road fund of five percent (5%) or less, or if there is an actual revenue shortfall at the close of a fiscal year in the general fund or road fund of five percent (5%) or less, as determined by the Office of State Budget Director* ~~In the event of an actual or projected deficit, as determined by the Office of State Budget Director, in total tax~~

receipts, as specified in KRS 48.130, of five percent (5%) or less], the Governor, the Chief Justice, and the Legislative Research Commission shall make any **appropriation**~~allotment~~ reductions for the budget units of their respective branches of government **in accordance with the budget reduction plan included in the enacted branch budget bill**~~that are deemed necessary and shall take any steps to revise allotments for their respective branches that are necessary to prevent a cash deficit~~.

- (2) No budget revision action shall be taken by any branch head in excess of the actual or projected **revenue shortfall**~~deficit~~.
- (3) **Appropriation reductions**~~Allotment revisions~~ shall be reported to the standing Appropriations and Revenue Committees of each house or to the Interim Joint Committee on Appropriations and Revenue, as appropriate.

➔Section 15. KRS 48.620 is amended to read as follows:

- (1) Allotments shall be made as provided by the allotment schedule, and may be revised upon the written certification of the Governor, the Chief Justice, and the Legislative Research Commission for their respective branches of government. No revisions of the allotment schedule may provide for an allotment or allotments in excess of the amount appropriated to that budget unit in a branch budget bill, or for expenditure for any other purpose than specified in a branch budget bill and a budget memorandum provided for by KRS 48.300.
- (2) Revisions of allotments under this section shall be reported and reviewed as provided by subsection (4) of KRS 48.500.

~~{(3) When the actual tax receipts accruing to the general fund or road fund, as appropriate, do not permit all the allotments provided for by the schedules of allotments of all branches of government, the secretary of the Finance and Administration Cabinet shall notify all branches of government and each branch shall take appropriate action concerning allotments.~~

~~{(4) This subsection shall not apply in the event of a projected or an actual deficit in tax receipts of the general or road funds as determined by KRS 48.130.}~~

➔Section 16. KRS 48.700 is amended to read as follows:

There is hereby created in the general fund of the State Treasury a surplus fund account subject to the following terms and conditions:

- (1) It shall contain all surplus tax receipts accruing to the general fund as provided by subsection (3)~~{(6)}~~ of KRS 48.140.
- (2) Except as provided in KRS 48.705, it shall contain all funds lapsed from general fund receipts not otherwise appropriated.
- (3) It shall contain all receipts from the sale of surplus property purchased with general fund tax receipts and not otherwise appropriated.
- (4) Except as provided in KRS 48.705, it shall contain all general fund tax revenues in excess of estimates.
- (5) It shall contain all moneys saved as a result of a reorganization of state government operations funded by the general fund.
- (6) Funds in the account shall be invested at interest and the interest shall also accrue to this account.
- (7) It shall contain any other funds which are required by law or regulation to accrue to the surplus account of the general fund.
- (8) No expenditures shall be made from this account unless appropriated by the General Assembly or unless required by the budget reduction provisions of a branch budget bill, or as provided by KRS 48.130.

➔Section 17. KRS 48.705 is amended to read as follows:

- (1) A budget reserve trust fund account is hereby created in the general fund, pursuant to KRS 45.305. The budget reserve trust fund account shall be funded through direct appropriations, **and surplus amounts as provided in subsection (2) of this section**~~revenue receipts in the general fund, and certain unexpended appropriations~~. Moneys in the account shall remain unallotted unless required by the provisions of this section.

- (2) (a) ~~Beginning with the fiscal year starting on July 1, 1995, and for~~ Each fiscal year ~~thereafter~~, except as provided in subsection (3) of this section, within thirty (30) days of the end of ~~the~~~~each~~ fiscal year, the secretary of the Finance and Administration Cabinet shall cause to be deposited to the budget reserve trust fund account the lesser of the following amounts:
1. Fifty percent (50%) of ~~the~~~~all~~ general fund *surplus* ~~revenue receipts in excess of the revenue estimates determined under KRS 48.120(3), or the amount subsequently certified by the state budget director pursuant to KRS 48.400(3) for the year just ended; and fifty percent (50%) of the unexpended balance of all general fund appropriations for the fiscal year just ended that would otherwise lapse to the general fund surplus account under KRS 45.229;~~ or
  2. The amount necessary ~~from~~ ~~the~~ general fund *surplus* ~~revenue receipts in excess of the revenue estimates determined under KRS 48.120(3), or the amount subsequently certified by the state budget director pursuant to KRS 48.400(3) for the year just ended, and from the unexpended balance of all general fund appropriations for the fiscal year just ended that would otherwise lapse to the surplus account under KRS 45.229,~~ to make the balance of the budget reserve trust fund account equal to five percent (5%) of the actual general fund ~~revenue~~ receipts collected during the fiscal year just ended, as determined by the Finance and Administration Cabinet.
- (b) Any amounts to be deposited to the budget reserve trust fund account from ~~the~~ general fund *surplus* ~~revenue receipts in excess of the revenue estimates determined under KRS 48.120(3) or the amount subsequently certified by the state budget director pursuant to KRS 48.400(3)~~ shall be determined after the *surplus has* ~~excess receipts have~~ been reduced by the amount necessary to implement the provisions of any surplus expenditure plan authorized by KRS 48.140 and enacted as a part of a branch budget bill.
- (3) If, at the close of any fiscal year, the budget reserve trust fund account has a balance equal to or greater than five percent (5%) of the actual general fund ~~revenue~~ receipts collected during the fiscal year just ended, as determined by the Finance and Administration Cabinet, the deposits required under subsection (2) of this section shall be suspended for that year.
- (4) ~~(a)~~ Moneys in the budget reserve trust fund account may be appropriated by the General Assembly in a regular or special session.
- ~~(b) Funds from the budget reserve trust fund account may be used pursuant to the provisions of KRS Chapter 47 if actual general fund revenue receipts are not sufficient to meet the general fund appropriation levels authorized by the General Assembly in the branch budget bills for the executive, legislative, and judicial branches, as determined under KRS 48.130 and 48.600, or an appropriation provision in any act.~~
- (5) Before authorizing any allotments from the budget reserve trust fund account, the secretary of the Finance and Administration Cabinet shall notify in writing the Interim Joint Committee on Appropriations and Revenue. The notice shall include the amount and purpose for the proposed allotment.
- (6) Within thirty (30) days of the close of each fiscal year, the secretary of the Finance and Administration Cabinet shall report to the Interim Joint Committee on Appropriations and Revenue the general fund ~~revenue~~ receipts collected for the fiscal year just ended, the balance of the budget reserve trust fund account, and any amounts deposited to the budget reserve trust fund account pursuant to the provisions of subsection (2) of this section.
- (7) All sums appropriated or deposited to the budget reserve trust fund account shall not lapse at the close of the fiscal year but shall carry forward into the next fiscal year ~~and shall remain available for the purposes of this section~~.

➔ Section 18. KRS 48.710 is amended to read as follows:

There is hereby created in the road fund of the State Treasury a surplus fund account subject to the following terms and conditions:

- (1) It shall contain all surplus tax receipts accruing to the road fund as provided by subsection (3) ~~(6)~~ of KRS 48.140.
- (2) It shall contain all funds lapsed from moneys originating from road fund receipts;
- (3) It shall contain all receipts from the sale of surplus property purchased with road fund receipts;

- (4) It shall contain all road fund receipts in excess of estimates;
- (5) It shall contain all moneys saved as a result of a reorganization of state government operations funded by the road fund;
- (6) Funds in the account shall be invested at interest and the interest shall also accrue to this account;
- (7) It shall contain any other funds which are required by law or regulation to accrue to the surplus account of the road fund;
- (8) No expenditures shall be made from this account unless appropriated by the General Assembly or unless required by budget reduction provisions of a branch budget bill, or as provided by KRS 48.130.

➔Section 19. KRS 176.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) ***"Biennial highway construction plan" means the specifically identified individual transportation projects or portions thereof identified for funding during the upcoming biennium, which correspond to the first two (2) years of the six (6) year road plan;***
- (2) "Department" means Department of Highways;~~and~~
- (3)~~(2)~~ ***"Project" means the design, right-of-way, utility, or construction phase of a highway construction project;***
- (4) "Roads" includes highways, bridges, and bridge approaches; **and**
- (5) ***"Six (6) year road plan" means the plan developed under Section 20 of this Act.***

➔Section 20. KRS 176.430 is amended to read as follows:

- (1) ***The Transportation Cabinet shall undertake a continuing study of the needs of the highways under its jurisdiction for the purpose of bringing existing facilities to acceptable standards or for the replacement of existing facilities when required.***
- (2) ***The Transportation Cabinet shall develop a recommended six (6) year road plan that identifies the individual transportation projects or portions thereof that are scheduled to be constructed in each county. The recommended six (6) year road plan shall include a recommended biennial highway construction plan. The recommended six (6) year road plan and recommended biennial highway construction plan shall be submitted to the General Assembly as required by subsection (6)(f) of Section 3 of this Act. The six (6) year road plan shall include but shall not be limited to the following information for each project:***
  - (a) ***The county name;***
  - (b) ***The Kentucky Transportation Cabinet project identification number;***
  - (c) ***The route where the project is located;***
  - (d) ***The length of the project;***
  - (e) ***A description of the project and the scope of improvement;***
  - (f) ***The type of local, state, or federal funds to be used on the project;***
  - (g) ***The stage of development for the design, right-of-way, utility, and construction phase;***
  - (h) ***The fiscal year in which each phase of the project should commence;***
  - (i) ***The estimated cost for each phase of the project; and***
  - (j) ***The estimated cost to complete the project.***
- (3) ~~It is the intent of the General Assembly to direct~~ ***The Transportation Cabinet shall***~~to~~ identify projects in the six (6) year road plan that may, in accordance with this section, be advanced from later years, to maximize the use of all funds available to the cabinet, and to plan for the historical precedent of projects being delayed due to unforeseen circumstances. ***As required by Section 3 of this Act,***~~To accomplish the purpose of this section,~~ the ~~Governor~~~~cabinet~~ shall submit to the General Assembly, ***as part of the proposed biennial highway construction plan***~~at the same time the six (6) year road plan is submitted~~, a list of projects from the last four

- (4) years of the six (6) year road plan, not to exceed ten percent (10%) of the *recommended biennial highway construction appropriation* ~~expected appropriations for the biennium~~, which can be advanced if additional money is received *and all projects included in the enacted biennial highway construction plan have been advanced or completed to the extent possible* ~~or if a project in the biennium is delayed.~~
- ~~(2) In addition to the list submitted by the cabinet under subsection (1) of the section, the cabinet shall develop a separate list of projects from the last four (4) years of the six (6) year road plan, not to exceed ten percent (10%) of the actual biennial highway construction appropriation, which can be advanced if additional money is received or if a project in either year of the biennium is delayed. This list shall be reported to the Legislative Research Commission.~~
- ~~(3) Any project that is accelerated under subsections (1) or (2) of this section shall be reported to the Legislative Research Commission.~~
- ~~(4) The cabinet may change the fund source on any project in the six (6) year road plan to maximize the efficient use of federal funds.~~
- ~~(5) The projects to be funded in the last four (4) years of the six (6) year plan shall not exceed revenue estimates provided by the Transportation Cabinet.~~
- ~~(4)~~~~(6)~~ In developing the design, right-of-way, utility, and construction phase of each project, the following factors shall be considered but are not exclusive:
- (a) Alignment of existing roads;
  - (b) The width or elevation of existing roadways and shoulder surfaces;
  - (c) The width of rights-of-way;
  - (d) The cost of each phase of the project plus a separate identification of the cabinet's administrative costs for each phase;
  - (e) The type and volume of traffic;
  - (f) The condition of structures and drainage;
  - (g) The accident rate;
  - (h) The geographic distribution of roadways to be constructed or reconstructed; and
  - (i) The social, economic, and environmental impact of the proposed project.
- ~~(7) The six (6) year road plan shall designate the fiscal year each phase is scheduled to commence, a cost estimate for each phase, and a projected date for each phase to begin.~~
- ~~(5)~~~~(8)~~ The Transportation Cabinet shall, *on a monthly basis*, transmit *electronically* ~~electronic data~~ to the General Assembly through the Legislative Research Commission *a report* on all activity relating to all projects with open activity conducted by the Transportation Cabinet during the biennium. The data for each project shall contain all cabinet activity on projects funded through the road fund, including resurfacing and rural and secondary projects, and shall also include but not be limited to the following:
- (a) District number and project item number, which shall remain in effect throughout the entire life of the project, subject to the following conditions:
    1. A project split into more than one (1) project during its life shall maintain the same item number with a suffix;
    2. Two (2) or more projects merged shall be identified by the new merged project maintaining the project item number of one (1) of the projects being merged. The total cost of the merged project shall be set forth; and
    3. A project that has been merged with another project and all funds authorized for the initial project that is subsequently shifted to the new merged project shall remain in the six (6) year road plan and shall be identified with a cross reference to the superseded project and superseded project item number;
  - (b) The county name and county number;
  - (c) The route prefix, route number, and route suffix;

- (d) Termini description including beginning milepoint and ending milepoint;
  - (e) Type of work;
  - (f) Length of the project in miles;
  - (g) Project authorization system number, date the project was authorized, the TD-10 number authorizing the project, and the amount authorized;
  - (h) Year the project was enacted in a six (6) year road plan, and the notation "A" if the project is active and the notation "I" if the project is inactive;
  - (i) The phase code "P" for the planning phase, "D" for the design phase, "R" for the right-of-way phase, "U" for the utility phase, and "C" for the construction phase;
  - (j) The original estimate, fund code, and fiscal year each phase is expected to begin as enacted in the six (6) year road plan;
  - (k) The current estimate, fund code, and fiscal year each phase is expected to begin;
  - (l) The status of funding for each phase;
  - (m) The date current information has been changed for each phase;
  - (n) The letting date for each phase;
  - (o) Total number of right-of-way parcels, deeds signed, suits filed, and right-of-way entries completed;
  - (p) The date right-of-way plans are to be submitted to the central office in Frankfort and the status of right-of-way plans;
  - (q) Total utility relocations to be completed and the actual number completed;
  - (r) The award date, the construction project code number, and the award amount for the construction phase;
  - (s) The total number of contract change orders issued for each phase, the date of the most recent change order, and the net change order amount for each phase;
  - (t) The name of the contractor, the contractor's vendor number in the Statewide accounting ~~and Reporting~~ system ~~(STARS)~~, current contract amount, and the current amount earned by the contractor;
  - (u) The estimated date for completion of the project, current percentage of work completed based upon time, and the actual contract completion date;
  - (v) The department's engineer's estimate for the project; and
  - (w) Total expenditures by phase.
- ~~(6)(9)~~ The department shall ~~monthly~~ transmit **on a monthly basis**, electronic data to the General Assembly through the Legislative Research Commission on the activity on all state resurfacing projects and all rural secondary projects that shall include as much applicable information as possible as identified in subsection ~~(5)(8)~~ of this section.
- (7) In implementing the enacted biennial highway construction plan, the Transportation Cabinet may expend funds necessary to complete the projects authorized, amended only by variations necessitated by bid or unforeseen circumstances.**
- ~~(8)(10)~~ The department shall pursue digitizing all Kentucky roads on a geographic information system as funds are made available by the General Assembly. The digitized maps shall merge map layers and text layers to produce maps that display geographic information and textual information detailing the six (6) year road plan as enacted by the General Assembly.

➔Section 21. KRS 176.440 is amended to read as follows:

~~(1)~~ The state highway engineer shall provide a cost estimate for any project that a member of the General Assembly desires to be considered for advancement or inclusion in the six (6) year road plan ~~if the request is received in writing by the secretary of the Transportation Cabinet no later than November 1 of the year prior to the~~

~~convening of the even numbered year regular session of the General Assembly. The cost estimate under this subsection shall be provided prior to January 15 of the following year.~~

- ~~(2) The six (6) year road plan presented to the General Assembly for approval and funding as provided in KRS 45.245, the budget memorandum, and KRS 176.420 may be amended by the General Assembly. An amendment by the General Assembly that results in the addition of a new project phase to the six (6) year road plan shall use project phase costs supplied by the state highway engineer.~~

➔Section 22. KRS 176.525 is amended to read as follows:

- (1) During the construction phase of a new road construction project, potential industrial park sites identified during the design phase shall be used as waste sites by the department or the contractor who was awarded the project. Waste shall include, but not be limited, to nonhazardous nonsoluble construction material, steel, concrete, brick, asphalt, rock, dirt, or other fill material, but shall not include vegetation resulting from land clearing and grubbing, utility line maintenance, seasonal and storm-related cleanup, or any hazardous material or hazardous waste as defined in KRS 174.405.
- (2) The purpose of using the site as a repository for waste is to reduce the cost associated with the road project and to level or otherwise create a site sufficient to support industrial activities. The department or the department's contractor shall use stabilization methods to reduce significant differential settling of the waste. The department or the department's contractor shall continually grade and compact the waste site, and design surface contours to minimize water run-off, until the site is stable, final grading is complete, and the site is ready for building to begin on an industrial park.
- (3) If a waste site is owned by the state, the state shall deed in fee simple the area used as a waste site to an interested city, county, or other governmental agency upon completion of the highway project after the final pay estimate has been processed.
- (4) The department shall ~~consult~~~~upon March 27, 1998, begin consulting~~ with the appropriate elected officials affected by new routes proposed to be constructed in the ~~1999-2004 six (6) year highway plan and each enacted~~ six (6) year ~~road~~~~highway~~ plan ~~thereafter~~. The department shall consult with the appropriate elected officials to identify waste sites along the proposed new routes that may be potential industrial park sites.

➔Section 23. KRS 11.068 is amended to read as follows:

- (1) There is created an agency of state government known as the Office of State Budget Director. The office shall be attached for administrative purposes to the Office of the Governor.
- (2) The office shall include the following major organizational units:
  - (a) The Office of State Budget Director, headed by the state budget director. The state budget director shall be appointed by the Governor pursuant to KRS 11.040 and shall serve, under direction of the Governor, as state budget director and secretary of the state planning committee. The office shall include such principal assistants and supporting personnel appointed pursuant to KRS Chapter 12 as may be necessary to carry out the functions of the office. The office shall have such duties, rights, and responsibilities as are necessary to perform, without being limited to, the following functions:
    1. Functions relative to the preparation, administration, and evaluation of the executive budget as provided in KRS Chapters 45 and 48 and in other laws, including but not limited to, capital construction budgeting, evaluation of state programs, program monitoring, financial and policy analysis and issue review, and executive policy implementation and compliance;
    2. Continuous evaluation of statewide management and administrative procedures and practices, including but not limited to, organizational analysis and review, economic forecasting, technical assistance to state agencies, forms control, and special analytic studies as directed by the Governor; and
    3. Staff planning functions of the state planning committee and evaluation of statewide management and administrative practices and procedures.
  - (b) Governor's Office for Policy and Management, headed by the state budget director~~, who shall report to the Governor~~. The state budget director shall maintain staff employed pursuant to KRS Chapter 18A sufficient to carry out the functions of the office relating to state budgeting as provided in paragraph (a) of this subsection and state planning as provided in KRS Chapter 147, review of administrative

regulations proposed by executive agencies prior to filing pursuant to KRS Chapter 13A and such other duties as may be assigned by the Governor.

- (c) Governor's Office for Policy Research, headed by the state budget director. The Governor's Office for Policy Research shall assist the state budget director in providing policy research data, information, and analysis to the Governor on public policy issues that impact the Commonwealth. The state budget director shall identify and direct the research to be completed and provided by the office. The state budget director shall maintain staff employed in accordance with KRS Chapter 18A sufficient to carry out the functions of the office.
- (d) Governor's Office for Economic Analysis, headed by the state budget director ~~[-, who shall report to the Governor.]~~. The state budget director shall maintain staff employed in accordance with KRS Chapter 18A sufficient to carry out the functions of the office. The Governor's Office for Economic Analysis shall carry out the revenue estimating and economic analysis functions and responsibilities, including but not limited to the functions and responsibilities assigned to the Office of State Budget Director by ~~KRS Chapter 48 [48.115, 48.117, 48.120, 48.400, and 48.600]~~. The Governor's Office for Economic Analysis shall perform the tax administrative function of using tax data to provide the Department of Revenue with studies, projections, statistical analyses, and any other information that will assist the Department of Revenue in performing its tax administrative functions.

➔Section 24. KRS 11.250 is amended to read as follows:

- (1) The Governor-elect or a delegate appointed by him *or her* shall be entitled to examine the budget ~~request~~ *recommendations* of the executive branch of government, and the Finance and Administration Cabinet shall provide him *or her* with every practicable facility for reviewing and familiarizing himself *or herself* with ~~the recommendations [its contents]~~ *the recommendations*. The Governor-elect shall be entitled to a seat in all hearings thereon. He *or she* shall be furnished a copy of the budget request of each executive branch budget unit. The budget director shall make available to the Governor-elect so much as he *or she* requests of the information upon which the ~~executive branch [Governor's] budget recommendations are [recommendation is]~~ *executive branch* budget *recommendations* are based.
- (2) After a review of the executive branch *and Transportation Cabinet* draft budget ~~bills [bill]~~, the Governor-elect may prepare revisions and additions thereto. The budget director shall assist, upon request, in the preparation of such revisions and additions.
- (3) The budget director shall have as many copies of the revised budget ~~recommendations [recommendation]~~ of the executive branch of government printed as the Governor-elect requests.

➔Section 25. KRS 18A.1132 is amended to read as follows:

- (1) Prior to a layoff of state employees in the executive branch ~~[ ]~~ required by a *budget reduction plan enacted pursuant to Section 6 of this Act* ~~[projected or actual reduction in tax receipts contemplated under the provisions of subsections (1) and (6) of KRS 48.130]~~, each cabinet shall prepare a lay-off plan that complies with the provisions of KRS 18A.113 and this section.
- (2) Each lay-off plan shall provide that a layoff of state employees shall occur only after all other cost saving measures are taken and have failed to alleviate the *revenue shortfall, as defined in Section 1 of this Act, of five percent (5%) or less* ~~[projected or actual deficit]~~. These measures shall be specified in the plan, in detail, and shall include but not be limited to:
  - (a) A hiring freeze of all types of appointments;
  - (b) A reduction or delay of expenditures that would not prevent the provision of services required by law;
  - (c) Consolidation of offices and job duties that would not prevent the provision of services required by law;
  - (d) Transfer of funds as provided by the budget reduction plan enacted pursuant to KRS Chapter 48;
  - (e) Transfer of funds appropriated for or allotted to vacant positions as provided by the budget reduction plan provided for by KRS 48.130, unless it is certified that the positions are essential and cannot be filled in the period during which layoffs are to occur by transfer of existing employees of the appointing authority;
  - (f) The filling of vacancies and promotions from within the cabinet; and

- (g) Transfers of employees within the cabinet as provided by KRS 18A.1131(3) and (4).
- (3) Each cabinet shall submit:
  - (a) Its lay-off plan; and
  - (b) A list of employees who would remain subject to layoff after the implementation of cost-saving measures;

to the secretary of the Personnel Cabinet for review. Upon approval, the lay-off plans shall be submitted to the Governor for approval.
- (4) Upon approval of the plan by the Governor, the secretary shall attempt to transfer employees as provided by KRS 18A.1131(4)(b). Employees who cannot be so transferred may be laid off.
- (5) If no position is available to an employee subject to layoff under the procedures established by this section, the employee shall be notified in writing that he is to be laid off effective fifteen (15) days after receipt of notice and of the rights and privileges granted laid-off employees.
- (6) When the hiring freeze is ended, laid-off employees shall be hired before any applicant or eligible except laid-off employees already on such registers.

➔Section 26. KRS 41.010 is amended to read as follows:

- (1) As used in KRS 41.070, 41.110, 41.120, 41.130, 41.150, 41.160, 41.290, 41.300, or 41.990, unless the context requires otherwise, the terms "appropriation," "budget unit," "disbursements," ~~["employee,"]~~ "expenditures," "expenses," and "receipts" have the meaning given them by KRS 43.010 and 48.010.
- (2) As used in this chapter:
  - (a) "Bank" and "depository" include any qualified financial intermediary and savings and loan associations chartered by the State of Kentucky or the United States government designated to take custody of state funds on deposit, for periods greater than overnight, with the intent to honor presentments against those deposits;
  - (b) "Warrant" means a printed or electronic authorization from the Finance and Administration Cabinet for the Treasurer to issue a check;
  - (c) "Form" or "report" means any written method of transporting data;
  - (d) "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

➔Section 27. KRS 42.409 is amended to read as follows:

As used in KRS 42.410 and 45.760, unless the context requires otherwise:

- (1) "State total personal income" means the measure of all income received by or on behalf of persons in the Commonwealth, as most recently published in the Survey of Current Business by the United States Department of Commerce, Bureau of Economic Analysis.
- (2) "Estimated state total personal income" means the personal income figure used by the Governor's Office for Economic Analysis to generate final detailed revenue estimates.
- (3) "Total revenues" means revenues credited to the general fund and the road fund consistent with the provisions of KRS 48.120, as well as any restricted agency fund account from which debt service is expended.
- (4) "Anticipated total revenues" means *the official revenue*~~[final]~~ estimates~~[of revenues]~~, as provided for in KRS 48.120(2), projected for the general fund and the road fund, as well as any restricted agency fund account from which debt service is expended.
- (5) "Available revenues" means revenues credited to the general fund and the road fund consistent with the provisions of KRS 48.120, as well as any restricted agency fund account from which debt service is expended, minus any statutorily dedicated receipts of the respective funds.
- (6) "Anticipated available revenues" means *official revenue*~~[final]~~ estimates~~[of revenues]~~, as provided for in KRS 48.120(2), projected for the general fund and the road fund, as well as any restricted agency fund account from which debt service is expended, minus any statutorily dedicated receipts of the respective funds.

- (7) "Total assessed value of property" means state total net assessed value of property for taxes due, as obtained from the Department of Revenue.
- (8) "Per capita" means per unit of population, where population figures are the most recent available from the University of Louisville, Kentucky State Data Center.
- (9) "Appropriation-supported debt service" means the amount of an appropriation identified to be expended for debt service purposes in the executive budget recommendation, and the amount of an appropriation expended for debt services in a completed fiscal year.
- (10) "Appropriation-supported debt" means the outstanding principal of bonds issued by all state agencies and all individuals, agencies, authorities, boards, cabinets, commissions, corporations, or other entities of, or representing the Commonwealth with the authority to issue bonds, and for which debt service is appropriated by the General Assembly.
- (11) "Nonappropriation-supported debt" means the outstanding principal of bonds issued by all state agencies and all individuals, agencies, authorities, boards, cabinets, commissions, corporations, or other entities of, or representing the Commonwealth with the authority to issue bonds, and for which debt service is not appropriated by the General Assembly.
- (12) "Statutorily dedicated receipts" means revenues credited to the general fund and road fund consistent with the provisions of KRS 48.120, as well as any restricted agency fund account, which are required by an enacted statute to be used for a specific purpose. Statutorily dedicated receipts include, but are not limited to, the following:
  - (a) Receipts credited to the general fund which are subject to KRS 42.450 to 42.495, KRS 278.130 to 278.150, or KRS 350.139;
  - (b) Receipts credited to the road fund which are subject to KRS 175.505, KRS 177.320, KRS 177.365 to 177.369, KRS 177.9771 to 177.979, KRS 186.531, or KRS 186.535; and
  - (c) Receipts credited to a restricted agency fund account in accordance with any applicable statute.
- (13) "True interest cost" means the bond yield according to issue price without a reduction for related administrative costs, and is the same figure as the arbitrage yield calculation described in the United States Tax Reform Act of 1986.

➔Section 28. KRS 42.500 is amended to read as follows:

- (1) There shall be a State Investment Commission composed of the Governor who shall be chairman; the State Treasurer who shall be vice chairman and serve as chairman in the absence of the Governor; the secretary of the Finance and Administration Cabinet; and two (2) persons appointed by the Governor.
- (2) The individuals appointed by the Governor shall be selected as follows: one (1) to be selected from a list of five (5) submitted to the Governor by the Kentucky Bankers Association, and one (1) to be selected from a list of five (5) submitted to the Governor by the Independent Community Bankers Association.
- (3) The State Investment Commission shall meet at least quarterly to review investment performance and conduct other business. This provision shall not prohibit the commission from meeting more frequently as the need arises.
- (4) The Governor, State Treasurer, and secretary of the Finance and Administration Cabinet shall each have the authority to designate, by an instrument in writing over his or her signature and filed with the secretary of the commission as a public record of the commission, an alternate with full authority to:
  - (a) Attend in the member's absence, for any reason, any properly convened meeting of the commission; and
  - (b) Participate in the consideration of, and vote upon, business and transactions of the commission.

Each alternate shall be a person on the staff of the appointing member or in the employ of the appointing member's state agency or department.
- (5) Any designation of an alternate may, at the appointing member's direction:
  - (a) Be limited upon the face of the appointing instrument to be effective for only a specific meeting or specified business;

- (b) Be shown on the face of the appointing instrument to be a continuing designation, for a period of no more than four (4) years, whenever the appointing member is unable to attend; or
  - (c) Be revoked at any time by the appointing member in an instrument in writing, over his or her signature, filed with the secretary of the commission as a public record of the commission.
- (6) Any person transacting business with, or materially affected by, the business of the commission may accept and rely upon a joint certificate of the secretary of the commission and any member of the commission concerning the designation of any alternate, the time and scope of the designation, and, if it is of a continuing nature, whether and when the designation has been revoked. The joint certificate shall be made and delivered to the person requesting it within a reasonable time after it has been requested in writing, with acceptable identification of the business or transaction to which it refers and the requesting person's interest in the business or transaction.
- (7) Any three (3) persons who are members of the commission or alternates authorized under subsections (4) and (5) of this section shall constitute a quorum and may, by majority vote, transact any business of the commission. Any three (3) members of the commission may call a meeting.
- (8) The provisions of KRS 61.070 shall not apply to members of the commission.
- (9) The commission shall have authority and may, if in its opinion the cash in the State Treasury is in excess of the amount required to meet current expenditures, invest any and all of the excess cash in:
- (a) Obligations and contracts for future delivery of obligations backed by the full faith and credit of the United States or a United States government agency, including but not limited to:
    - 1. United States Treasury;
    - 2. Export-Import Bank of the United States;
    - 3. Farmers Home Administration;
    - 4. Government National Mortgage Corporation; and
    - 5. Merchant Marine bonds;
  - (b) Obligations of any corporation of the United States government, including but not limited to:
    - 1. Federal Home Loan Mortgage Corporation;
    - 2. Federal Farm Credit Banks;
      - a. Bank for Cooperatives;
      - b. Federal Intermediate Credit Banks; and
      - c. Federal Land Banks;
    - 3. Federal Home Loan Banks;
    - 4. Federal National Mortgage Association; and
    - 5. Tennessee Valley Authority obligations;
  - (c) Collateralized or uncollateralized certificates of deposit, issued by banks rated in one (1) of the three (3) highest categories by a nationally recognized rating agency or other interest-bearing accounts in depository institutions chartered by this state or by the United States, except for shares in mutual savings banks;
  - (d) Bankers acceptances for banks rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;
  - (e) Commercial paper rated in the highest category by a nationally recognized rating agency;
  - (f) Securities issued by a state or local government, or any instrumentality or agency thereof, in the United States, and rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;
  - (g) United States denominated corporate, Yankee, and Eurodollar securities, excluding corporate stocks, issued by foreign and domestic issuers, including sovereign and supranational governments, rated in one (1) of the three (3) highest categories by a nationally recognized rating agency;

- (h) Asset-backed securities rated in the highest category by a nationally recognized rating agency; and
  - (i) Shares of mutual funds, not to exceed ten percent (10%) of the total funds available for investment as described in subsection (9) of this section, each of which shall have the following characteristics:
    - 1. The mutual fund shall be an open-end diversified investment company registered under Federal Investment Company Act of 1940, as amended;
    - 2. The management company of the investment company shall have been in operation for at least five (5) years;
    - 3. At least ninety percent (90%) of the securities in the mutual fund shall be eligible investments pursuant to this section; and
  - (j) State and local delinquent property tax claims which upon purchase shall become certificates of delinquency secured by interests in real property not to exceed twenty-five million dollars (\$25,000,000) in the aggregate. For any certificates of delinquency that have been exonerated pursuant to KRS 132.220(5), the Department of Revenue shall offset the loss suffered by the Finance and Administration Cabinet against subsequent local distributions to the affected taxing districts as shown on the certificate of delinquency.
- (10) The State Investment Commission shall promulgate administrative regulations for the investment and reinvestment of state funds in shares of mutual funds, and the regulations shall specify:
- (a) The long and short term goals of any investment;
  - (b) The specification of moneys to be invested;
  - (c) The amount of funds which may be invested per instrument;
  - (d) The qualifications of instruments; and
  - (e) The acceptable maturity of investments.
- (11) Any investment in obligations and securities pursuant to subsection (9) of this section shall satisfy this section if these obligations are subject to repurchase agreements, provided that delivery of these obligations is taken either directly or through an authorized custodian.
- (12) (a) Income earned from investments made pursuant to this section shall accrue to the credit of the investment income account of the general fund, except that interest from investments of excess cash in the road fund shall be credited to the surplus account of the road fund and interest from investments of excess cash in the game and fish fund shall be credited to the game and fish fund, interest earned from investments of imprest cash funds and funds in the trust and revolving fund for each state public university shall be credited to the appropriate institutional account, and interest earned from the investment of funds accumulated solely by means of contributions and gifts shall not be diverted to any purpose other than that stipulated by the donor, when the donor shall have designated the use to which the interest shall be placed.
- (b) Except as otherwise provided by law, or by the obligations and covenants contained in resolutions and trust indentures adopted or entered into for state bond issues, interest earned from the investment of moneys appropriated to the capital construction accounts, trust and agency accounts, and trust and agency revolving accounts shall accrue to the capital construction investment income account.
- (c) **If there is a revenue shortfall, as defined in Section 1 of this Act, of five percent (5%) or less** ~~the total general fund revenue receipts are less than the total revenue estimates for the general fund under KRS 48.120 and 48.130,~~ the secretary of the Finance and Administration Cabinet, upon the recommendation of the state budget director, may direct the transfer of excess unappropriated capital construction investment income to the general fund investment income account. The amount of the transfer shall not exceed the amount of the shortfall in general fund revenues.
- (d) If the capital construction investment income is less than that amount appropriated by the General Assembly, the secretary of the Finance and Administration Cabinet may, upon recommendation of the state budget director, direct the transfer of excess unappropriated general fund investment income to the capital construction investment income account. The transfer of general fund investment income

revenues to the capital construction investment income account shall be made only when the actual general fund revenues are in excess of the ~~enacted~~ ~~revenue~~ estimates under KRS 48.120 and shall be limited to the amount of the excess general fund revenues. The amount of the transfer shall not exceed the amount of the shortfall in the capital construction fund revenues.

- (13) The authority granted by this section to the State Investment Commission shall not extend to any funds that are specifically provided by law to be invested by some other officer or agency of the state government.
- (14) The authority granted by this section to the State Investment Commission shall only be exercised pursuant to the administrative regulations mandated by KRS 42.525.
- (15) Each member of the State Investment Commission, with the exception of the Governor, shall post bond for his acts or omissions as a member thereof identical in amount and kind to that posted by the State Treasurer.

➔Section 29. KRS 43.050 is amended to read as follows:

- (1) The Auditor constitutes an agency independent of the administrative departments enumerated in KRS 12.020, it being the policy of the General Assembly to provide for the independent auditing of the accounts, financial transactions, and performance of all spending agencies of the state through a disinterested auditor, who is entirely independent of the state administration whose affairs he is called upon to audit.
- (2) The Auditor shall:
  - (a) Audit annually, and at such other times as may be deemed expedient, the accounts of all state agencies, all private and semiprivate agencies receiving state aid or having responsibility for the handling of any state funds, the accounts, records, and transactions of the budget units, and the general accounts of the state.
  - (b) Make a complete audit and verification of all moneys handled for the account of the state government by local officials charged with the collection of fees or other money for or on behalf of the state, when an audit is demanded in writing by the Legislative Research Commission, the secretary of the Finance and Administration Cabinet or the Governor, and may make an audit when it is not so demanded.
  - (c) Examine periodically the performance, management, conduct, and condition of all asylums, prisons, institutions for the mentally retarded, and eleemosynary institutions; public works owned, operated, or partly owned by the state, or in the conduct or management of which the state has any financial interest or legal power; and state agencies. The examinations shall give special attention to the faithful and economical application of any money appropriated by the state to the institution, public works, or state agency examined, or of any money in which the state has an interest.
  - (d) Examine annually the management and condition of the offices of the Finance and Administration Cabinet, the State Treasurer, and the chief state school officer, to determine whether the laws regulating their duties are being fully complied with, and all money received by them for the state fully accounted for.
  - (e) Examine, at least biennially, the Finance and Administration Cabinet's compliance with KRS 56.800 to 56.823, ~~and~~ this section, **and** KRS 48.111 ~~and KRS 48.190~~. Within sixty (60) days of the completion of each examination, the Auditor shall report his findings and recommendations to the Capital Projects and Bond Oversight Committee.
  - (f) Audit periodically all state revenue collections, and, if he finds that collections are not being satisfactorily made, report that fact to the authority whose duty it is to make the collections.
  - (g) Make special audits and investigations when required by the Governor.
  - (h) Investigate the means of accounting for, controlling, and insuring the safe custody of all property of the state, and verify the existence and condition of such property charged to, or held in the custody of any state agency.
  - (i) Audit the statements of financial condition and operations of the state government, ~~examine the estimates of resources available for appropriation and the estimates of receipts prepared for inclusion in each branch budget recommendation,~~ and certify in writing the results of the audit and examination with the comments he deems necessary for the information of the General Assembly ~~his certificate and comments to be included with the statements and estimates as presented in the branch budget recommendation~~.

- (j) Report immediately in writing to the Governor, each member of the Legislative Research Commission, and the secretary of the Finance and Administration Cabinet, any unauthorized, illegal, irregular, or unsafe handling or expenditure of state funds, or other improper practice of financial administration, or evidence that any such handling, expenditure, or practice is contemplated, and any obstruction of the Auditor or his agents during the conduct of any audit or investigation of a state agency.
  - (k) Assist the Legislative Research Commission at hearings and investigations conducted by it and cooperate with the Legislative Research Commission in the preparation of its reports to the General Assembly.
  - (l) Keep accounts showing the costs of his own operations and of each separate audit and investigation made by him, and the accounts he deems necessary to provide a record of warrants of the state outstanding as of the end of each calendar month.
- (3) The Auditor may investigate and examine into the conduct of all state and county officers who are authorized to receive, collect, or disburse any money for the state, or who manage or control any property belonging to the state or in which the state is interested, or who make estimates or records that are used as a basis by any state agency in the disbursement of public funds.
  - (4) The Auditor shall not be responsible for the keeping of any accounts of the state, except accounts relating to his own operations, and records of outstanding warrants. He shall not be responsible for the collection of any money due the state, or for the handling or custody of any state funds or property except in the process of counting and verifying the amounts of the funds or property in the course of the audits provided for in this section.

➔Section 30. KRS 45.0005 is amended to read as follows:

As used in this chapter:

- (1) *"Branch budget bill" shall have the same meaning as in Section 1 of this Act.*
- (2) "Document" means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof.
- ~~(3){(2)}~~ "Warrant" means a printed or electronic authorization from the Finance and Administration Cabinet for the State Treasurer to issue a check.
- ~~(4){(3)}~~ "Writing" or "written" means letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

➔Section 31. KRS 45.760 is amended to read as follows:

The provisions of any other law notwithstanding:

- ~~(1) [The head of each of the three (3) branches of government shall include in the branch budget recommendation and in the draft branch budget bill for his branch submitted to each even-numbered year regular session of the General Assembly pursuant to KRS 48.130, for the biennium period beginning July 1, 1994, and for each biennium thereafter, a recommended state capital projects program and a recommended program for the purchase of major items of equipment.]~~
- ~~(2) [The recommended capital construction program shall include:~~
  - ~~(a) [A complete list and summary description of each specific capital construction project recommended for funding during the biennium; and~~
  - ~~(b) [For each project:~~
    - ~~1. [The agency and purpose for which it will be used;~~
    - ~~2. [The justification for the project;~~
    - ~~3. [Its estimated completion date;~~
    - ~~4. [The total estimated cost of completing the project;~~
    - ~~5. [The estimated cost of the project during the biennium;~~

- ~~6. The recommended sources of funds for the entire project; and~~
- ~~7. The dollar amounts recommended for appropriation and the dollar amounts, listed by source, that are anticipated from every other source of funds for the biennium.~~
- ~~(3) All information required by subsection (2) of this section shall be included in each branch budget recommendation. Each branch budget bill shall contain only a complete list of the specific capital construction projects recommended for funding during the biennium and, for each project, the information specified in subparagraphs 5., 6., and 7. of subsection (2)(b) of this section.~~
- ~~(4) A report which details the effect of recommended new debt on the debt position of the Commonwealth shall be submitted at the same time the recommended capital program is submitted. Information shall be presented separately, and in total, for the general fund, the road fund, and for any affected restricted fund account.~~
- ~~(5) Information in the report shall include, but not be limited to, the following:~~
- ~~(a) Debt service on existing appropriation supported debt as a percent of anticipated total revenues;~~
  - ~~(b) Debt service on existing appropriation supported debt as a percent of anticipated available revenues;~~
  - ~~(c) The sum of debt service on existing appropriation supported debt and debt service on recommended new appropriation supported debt, as a percent of anticipated total revenues;~~
  - ~~(d) The sum of debt service on existing appropriation supported debt and debt service on recommended new appropriation supported debt, as a percent of anticipated available revenues;~~
  - ~~(e) The sum of debt service on existing appropriation supported debt and debt service on recommended new appropriation supported debt, as a percent of estimated state total personal income; and~~
  - ~~(f) The sum of existing appropriation supported debt and recommended new appropriation supported debt, as a percent of estimated state total personal income.~~
- ~~(6) During any biennium[beginning July 1, 1992, and during each biennium thereafter,] the amount allotted, from all sources, for expenditure on any project in the state capital construction program for that biennium shall not exceed the estimated cost of the project during that biennium, as shown in any branch budget bill, statutory budget memorandum, and biennial budget report enacted by the General Assembly, except as provided in this section **and**[,] KRS 45.770[,], and 45.780.~~
- ~~(7) The recommended program for the purchase of major items of equipment, submitted by the head of each of the three (3) branches of government, shall include:~~
- ~~(a) A complete list and summary description of each specific major item of equipment recommended for purchase during the biennium; and~~
  - ~~(b) For each major item of equipment:
 
    - ~~1. The agency and purpose for which it will be used;~~
    - ~~2. The justification for the purchase;~~
    - ~~3. The estimated cost of the item, including ancillary expenses and any expenses necessary to make the equipment functional and operational;~~
    - ~~4. The recommended sources of funds; and~~
    - ~~5. The dollar amounts recommended for appropriation and anticipated from every other source of funds for the purchase.~~~~
- ~~(8) All information required by subsection (5) of this section shall be included in the executive branch budget recommendation. The branch budget bill for the executive branch shall contain only a complete list of each specific item of major equipment recommended for purchase during the biennium and, for each item, the information specified in subparagraphs 3., 4., and 5. of subsection (7)(b) of this section.]~~
- ~~(2)(9)~~ When the General Assembly disapproves a *capital* project or item of equipment that was previously approved, it shall be eliminated as a *capital* project or major item of equipment in the Capital Projects Program. General fund moneys appropriated for that project or item of equipment but not allotted, and general fund moneys allotted but not expended to the project or equipment account, shall be transferred to the capital construction and equipment purchase contingency account in the capital construction fund. Agency or federal

funds for a disapproved project or item, that have been appropriated but unallotted or allotted but unexpended, shall be returned to the appropriate agency fund. Road fund moneys for a disapproved project or item that have been appropriated but unallotted or allotted but unexpended, shall be returned to the Road Fund Surplus Account.

- ~~(3)~~~~(4)~~ *Capital* projects and major items of equipment disapproved under subsection ~~(2)~~~~(9)~~ of this section shall be terminated.
- ~~(4)~~~~(11)~~ During any biennium ~~beginning July 1, 1992, and during each biennium thereafter~~, the amount allotted from all sources for expenditure for the purchase of any major item of equipment shall not exceed the estimated cost of the item as shown in any branch budget bill, statutory budget memorandum, and biennial budget report enacted by the General Assembly and authorizing the purchase, except as provided in subsections ~~(5)~~~~(12)~~ and ~~(6)~~~~(13)~~ of this section and in KRS 45.770 and 45.780.
- ~~(5)~~~~(12)~~ A major item of equipment to be used for medical, scientific, or research purposes, excluding computer equipment and aircraft, may be authorized even though it is not specifically listed in any branch budget bill, statutory budget memorandum, and biennial budget report enacted for the current biennium, subject to the following conditions and procedures:
- (a) Moneys specifically budgeted and appropriated by the General Assembly for another purpose shall not be reallocated for expenditure on the item; moneys utilized shall not jeopardize any existing program and shall not require the use of any current general funds specifically dedicated to existing programs;
  - (b) Funds are available for the purchase and the method of financing the purchase will not require an additional appropriation of state funds to acquire the item; and
  - (c) The purchasing agency shall, within thirty (30) days after making the purchase, report the purchase to the Capital Projects and Bond Oversight Committee. The report shall include a description of the item, the purpose for which it will be used, the necessity for the purchase, and the amount expended for the purchase from each source of funds used.
- ~~(6)~~~~(13)~~ Moneys from any source may be transferred to the allotment account of any capital project authorized by the General Assembly under this section, subject to the following conditions and procedures:
- (a) The total amount transferred shall not exceed fifteen percent (15%) of the amount authorized by the General Assembly unless:
    1. The source of funds is private or federal; or
    2. An unforeseen decision by a federal or state court or regulatory agency requires the transfer.
  - (b) Moneys specifically budgeted and appropriated by the General Assembly for another purpose shall not be allotted or reallocated for expenditure on the capital project.
  - (c) Moneys utilized shall not jeopardize any existing program and shall not require the use of any current general funds specifically dedicated to existing programs.
  - (d) The relevant entity head, or his designee, shall submit the capital project to the Capital Projects and Bond Oversight Committee at least fourteen (14) days prior to the committee meeting. The submission shall include a written certification to the committee that the transfer, in excess of fifteen percent (15%) of the amount authorized by the General Assembly, is:
    1. Paid for out of private or federal funds; or
    2. Required by an unforeseen decision by a federal or state court or regulatory agency; and
    3. Not allotted or reallocated from moneys specifically budgeted and appropriated by the General Assembly for another purpose; and
    4. Not jeopardizing any existing program and not requiring the use of any current general funds specifically dedicated to existing programs.
  - (e) If a capital project is financed with road funds, the cost overruns or scope increases shall be paid out of the highway contingency account established pursuant to KRS 45.247.

~~(7)~~~~(14)~~ A capital construction project or a major item of equipment may be authorized even though it is not specifically listed in any branch budget bill, statutory budget memorandum, and biennial budget report, subject to the following conditions and procedures:

- (a) Fifty percent (50%) or more of the actual cost shall be funded by federal or private funds, and fifty percent (50%) or less of the actual cost shall be funded by moneys appropriated to the capital construction and equipment purchase contingency account or, if the purpose of the project or equipment is to reduce energy costs, the relevant entity head certifies projected energy cost savings associated with the project or equipment are reasonable and sufficient to produce an aggregate simple payback period, as defined by KRS 56.770, of five (5) years or less;
- (b) Moneys specifically budgeted and appropriated by the General Assembly for another purpose shall not be allotted or reallocated for expenditure on the project or major item of equipment; moneys utilized shall not jeopardize any existing program and shall not require the use of any current general funds specifically dedicated to existing programs; and
- (c) The relevant entity head, or his designee, shall submit the project or major item of equipment to the committee for review as provided by KRS 45.800.

~~(8)~~~~(15)~~ The capital construction and equipment purchase contingency fund may be used to advance funds to projects authorized to be financed by bonds, to finance feasibility studies for projects which may be contemplated for future funding, or to audit the capital projects program when authorized by the General Assembly.

~~(9)~~~~(16)~~ On or before October 1, each *branch*~~[of the three (3) branches]~~ of government shall submit to the committee the following information:

- (a) A complete list and summary description of every capital construction project and major item of equipment not completed as of June 30 of the prior fiscal year; and
- (b) For each project and major item of equipment, as of July 1, of the current fiscal year:
  - 1. The project phase;
  - 2. The project account number, project name, and any other term employed to identify the project or major item of equipment;
  - 3. The available balance in the project or major item of equipment account, and any sums considered available for that project or major item of equipment;
  - 4. A statement of the transfers of funds to or from the project or major item of equipment account; and, any account to which transfers from each project or major item of equipment has been made;
  - 5. The year in which the project or major item of equipment was approved, with specific reference to the legislation by which the project or item was approved;
  - 6. Total expenditure on the project or major item of equipment;
  - 7. The current estimated completion cost, including the amount required for annual inflation; and
  - 8. A statement that additional funds for the completion of the project or major item of equipment are or are not required; and, if required, why sufficient funds for completion are not available; and
- (c) The balance in the appropriated, but unallotted account; and the balance in any account, however designated, that contains appropriated, but unallotted funds for capital construction.

~~(10)~~~~(17)~~ When the General Assembly authorizes a capital construction item in the capital construction section of a branch budget bill, the entity head charged with executing the branch budget shall construct the capital construction item according to the requirements set forth in the branch budget bill, statutory budget memorandum, supporting documentation considered by the General Assembly, and branch budget records. The entity head shall not deviate from these requirements with regard to:

- (a) Purpose or location to the extent that the capital construction item no longer meets the identified needs; or

- (b) Configuration for reasons other than practical accommodation to the construction site or specific program to be accommodated within that capital construction item.

➔Section 32. KRS 45.793 is amended to read as follows:

The Finance and Administration Cabinet and any institution that manages its own capital construction under KRS 164A.580 shall provide to the committee at its January, April, July, and October regular meetings a status report of any capital project, excluding items of equipment, not yet completed which received line item authorization by the Kentucky General Assembly or was authorized pursuant to KRS 45.760(7){(14)}. The Capital Projects and Bond Oversight Committee shall prescribe data elements to be included in the quarterly status reports. For each capital project, the status report shall include but not be limited to the:

- (1) Project title;
- (2) County or counties in which the project is located;
- (3) Current phase of the project;
- (4) Estimated completion date of the project;
- (5) Explanation of any delay or major change in the project, including deletion or modification of project components; and
- (6) Any other information that the committee requests.

➔Section 33. KRS 45.800 is amended to read as follows:

- (1) Except as otherwise provided in subsection (2)(b) of KRS 45.770, prior to transferring funds from any source to the allotment account of a capital construction project or major item of equipment, the relevant entity head, or his designee, shall present to the Capital Projects and Bond Oversight Committee, at least fourteen (14) days prior to the committee meeting, for its review, specification of the amount of the proposed transfer, documentation of the necessity for the transfer, and, with respect to capital construction projects, documentation of:
  - (a) The amount already expended on the project prior to and during the current biennium; and
  - (b) Any alterations made or planned in the project since its consideration by the General Assembly during the most recent even-numbered-year regular session.
- (2) Within thirty (30) days after submission to the committee of a proposed capital construction and equipment purchase contingency account transfer, the committee shall determine whether the amount of the proposed transfer is reasonable and consistent with KRS 45.770, whether the proposed transfer is necessary, and whether any alterations made or planned in a project materially change the project as considered and authorized by the General Assembly. If the committee does not approve a proposed transfer or other proposed action, the committee, unless the Legislative Research Commission directs otherwise, shall promptly transmit its findings and determination to the head of the entity that presented the proposal.
- (3) If the committee does not approve a proposed transfer or other proposed action, the transfer shall not be made nor the action taken unless the relevant entity head, or his designee, shall:
  - (a) Revise the transfer or action to comply with the objections of the committee;
  - (b) Cancel the transfer or action; or
  - (c) Determine to make the transfer or take the action not approved by the committee.
- (4) The decision made by the relevant entity head, or his designee, under the preceding subsection shall be communicated to the committee in writing within thirty (30) days of the committee's not approving the proposed transfer or other proposed action.
- (5) The committee, unless the Legislative Research Commission directs otherwise, shall maintain records of its findings and determinations and the relevant entity head's, or his designee's, report of his action on each proposed transfer from the capital construction and equipment purchase contingency account. If the committee determines that the amount of a proposed transfer is not reasonable or is not consistent with KRS 45.770, or that the transfer is not necessary, or if the committee finds that any alteration in a project materially changes the project as considered and approved by the General Assembly, the committee's determination and the action of

the secretary of the Finance and Administration Cabinet, or other appropriate entity head, on the transfer shall be transmitted to the appropriate interim joint committees of the Legislative Research Commission and to the General Assembly when next convened.

- (6) The committee, unless the Legislative Research Commission directs otherwise, shall maintain reports of purchases made under subsection (5)~~[(12)]~~ of KRS 45.760, reports of transfers made under KRS 45.760 to this section, reports of transfers made from the emergency repair, maintenance, and replacement account, and a record of any committee finding or recommendation relating to such purchases and transfers.
- (7) The committee shall monitor the costs of state capital construction projects in comparison with the costs of construction for the private sector to determine whether the costs are comparable and, if not comparable, the reasons for any difference. The committee shall consider contractors' charges to the state, land acquisition costs, costs and availability of materials, cost and availability of labor, and laws, regulations, and purchasing procedures pertaining to state capital construction projects that are not applicable to construction for the private sector. The committee's findings and recommendations shall be transmitted to the appropriate interim joint committee of the Legislative Research Commission and to the General Assembly when convened.

➔Section 34. KRS 45.818 is amended to read as follows:

The executive director of the Commonwealth Office of Technology shall provide to the Capital Projects and Bond Oversight Committee at its January, April, July, and October regular meetings a status report on any information technology system not yet completed which received line item authorization by the Kentucky General Assembly or was authorized pursuant to KRS 45.760(7)~~[(14)]~~, excluding systems of an institution as defined under KRS 164.001. The committee shall prescribe data elements to be included in the quarterly status reports.

➔Section 35. KRS 56.440 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Commission" means the State Property and Buildings Commission;
- (2) "Real estate" includes lands together with improvements thereon and appurtenances thereto;
- (3) "Building" includes any structure or improvement upon real estate of a permanent nature and additionally includes any sites, structures, equipment, machinery, or devices for the purpose of establishing, developing, or furthering television or related services in aid of education or in aid of any other proper public functions, whether or not the same would otherwise be legally defined as buildings; but only (except for industrial development projects) if used or to be used by the Commonwealth of Kentucky or one (1) of its departments or agencies (not including independent municipal corporations or political subdivisions);
- (4) "Building project" includes the acquisition of any real estate and the acquisition, construction, reconstruction, and structural maintenance of buildings, the installation of utility services, including roads and sewers, and the purchase and installation of equipment, facilities, and furnishings of a permanent nature for buildings; the purchase and installation initially of movable equipment, furnishings, and appurtenances necessary to make a building operable; and for television or related purposes as referred to in subsection (3) of this section, for use by the state government or one (1) of its departments or agencies, not including any independent municipal corporation or political subdivision, or any other capital outlay program authorized by any branch budget bill or other legislation;
- (5) "Industrial development project" means and includes the acquisition of any real estate and the construction, acquisition, and installation thereon and with respect thereto of improvements and facilities necessary and useful for the improvement of such real estate for conveyance to or lease to industrial entities to be used for manufacturing, processing, or assembling purposes, including surveys, site tests and inspections, subsurface site work, excavation, removal of structures, roadways, cemeteries, and other surface obstructions, filling, grading and provision of drainage, storm water detention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communication, and other similar facilities, off-site construction of utility extensions to the boundaries of such real estate, construction and installation of buildings, including buildings to be used for worker training and education, rail facilities, roads, sidewalks, curbs, and other improvements to such real estate necessary to its manufacturing, processing, or assembling use by industrial entities; provided that an industrial entity must have agreed with the commission, prior to the financing of an industrial development project, to develop, in conjunction with such industrial development project, manufacturing, processing, or assembling facilities satisfactory to the commission;

- (6) "Industrial entity" means any corporation, partnership, person, or other legal entity, whether domestic or foreign, which will itself or through its subsidiaries and affiliates construct and develop a manufacturing, processing, or assembling facility on the site of an industrial development project financed pursuant to this chapter;
- (7) "Incremental taxes" means, for any fiscal year of the Commonwealth, that amount of money which is equal to all tax revenues received by the Commonwealth, as taxing entity, during such fiscal year in respect of an industrial development project and improvements and equipment thereon and the products thereof, and activities carried out by the occupants and users of such industrial development project, minus an amount equal to all tax revenues received by the Commonwealth, as taxing entity, in respect of the site of the industrial development project and the same type of taxable properties and activities during the fiscal year immediately preceding the fiscal year during which construction of the improvements undertaken by an industrial entity as a result of the financing of such industrial development project commenced. Incremental taxes shall include such tax revenues as state corporate income taxes, state income taxes paid by employees of manufacturing, processing, and assembling facilities developed on the site of an industrial development project, state property taxes, state corporation license taxes, and state sales and use taxes, but shall not include any taxes levied specifically for educational purposes;
- (8) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state but which is not an independent municipal corporation or political subdivision;
- (9) "Cabinet" means the Finance and Administration Cabinet;
- (10) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite;
- (11) "Asbestos-containing material" means any material which contains more than one percent (1%) asbestos by weight;
- (12) "Friable material" means any material applied onto ceilings, walls, structural members, piping, ductwork, or any other part of the building structure which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure;
- (13) "Meeting" means all gatherings of every kind, including video teleconferences;
- (14) "Video teleconference" means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment;~~and~~
- (15) "Writing" or "written" shall mean letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation; *and*
- (16) ***"Branch budget" shall have the same meaning as in Section 1 of this Act.***

➔Section 36. KRS 56.8605 is amended to read as follows:

As used in KRS 56.860 to 56.869:

- (1) "Authorized project" means:
- (a) Any project approved by the General Assembly and included in an enacted budget; or
  - (b) Any project approved by the General Assembly that is certified by the secretary of the Finance and Administration Cabinet in accordance with the provisions of KRS 56.870, to be of a type that will independently produce revenues or will be payable from receipts of federal transportation funds that are projected by the commission to be sufficient to fully meet debt service, issuance costs, reserve fund requirements, insurance premiums, or any other expenditures necessary for financing so that no appropriation of state funds is required;
- (2) "Cabinet" means the Finance and Administration Cabinet;
- (3) "Commercial paper" means obligations that by their terms mature not more than three hundred sixty-six (366) days from the date of their issuance and that may be refunded;

- (4) "Commission" means the Kentucky Asset/Liability Commission;
- (5) "Estimated revenues" means the *official revenue estimates established pursuant*~~{detailed revenue estimate or revised revenue estimate as certified by the secretary of the Finance and Administration Cabinet pursuant}~~ to KRS~~[ 48.115 and]~~ 48.120 on or before the dates on which tax and revenue anticipation notes are awarded to the purchaser;
- (6) "Financial agreements" means interest rate swaps, options, or other agreements between two (2) parties to exchange or have the conditional right to exchange interest rate exposure from fixed rate to variable rate or from variable rate to fixed rate, or to provide other economic benefit to an issuance of notes or a portfolio of notes, or to hedge the net interest margin of the Commonwealth;
- (7) "Financing agreement" means an agreement between the commission and the cabinet, or between the cabinet and a state agency, relating to the funding of projects or items associated with projects as described in KRS 56.867(3), or a judgment against a state agency or the Commonwealth. The provisions of a financing agreement shall require either the cabinet to make payments to the commission relating to the commission's issuance of notes, or the state agency to make payments to the cabinet reimbursing the cabinet for its payments to the commission on the agency's behalf. The obligations of the cabinet or the state agency under a financing agreement shall be contingent upon appropriations by the General Assembly to the cabinet or to the agency for the payment of those obligations;
- (8) "Fixed-rate obligations" means obligations on which the interest rate remains constant to maturity;
- (9) "Funding notes" means notes issued under the provisions of KRS 56.860 to 56.869 by the commission with a final maturity of not more than ten (10) years for the purpose of funding judgments;
- (10) "Interest-sensitive assets" means tangible and intangible property held by the Commonwealth whose market value is dependent upon the level of interest rates;
- (11) "Interest-sensitive liabilities" means interest-bearing debts or other obligations of the Commonwealth or a state agency;
- (12) "Multimodal obligations" means obligations for which the time period for establishing the rate of interest may be selectively determined and altered;
- (13) "Net interest margin" means the net income or expense associated with the difference between the Commonwealth's interest-sensitive assets and interest-sensitive liabilities;
- (14) "Project notes" means notes issued under the provisions of KRS 56.860 to 56.869 by the commission with a final maturity of not more than twenty (20) years for the purpose of funding authorized projects, which may include bond anticipation notes;
- (15) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, and set out in KRS Chapter 12, or any board, commission, institution, state university, or division exercising any function of the Commonwealth;
- (16) "Tax and revenue anticipation notes" means notes that are issued under the provisions of KRS 56.860 to 56.869 by the commission with a final maturity that is no later than the last day of the fiscal year during which the tax and revenue anticipation notes are issued and that are issued in anticipation of estimated revenues to be received in that fiscal year; and
- (17) "Variable-rate demand obligations" means obligations on which the rate of interest is set by reference to a predetermined index or formula, by auction, by an agent that, in the sole judgment of the commission, has the financial expertise to establish market interest rates, or by similar means.

➔Section 37. KRS 131.585 is amended to read as follows:

There is hereby created within the Department of Revenue a state debt offset account, which will be subject to the provisions of the restricted fund group, as provided in KRS 48.010~~(15)~~~~(13)~~(f), and all funds collected under KRS 131.565(6) shall be credited thereto with only the expenses of the Department of Revenue related to development, implementation and administration of KRS 131.560 to 131.595 to be paid therefrom. This account shall not lapse.

➔Section 38. KRS 148.810 is amended to read as follows:

- (1) Funds in the park capital maintenance and renovation fund shall be used for the maintenance and renovation of park facilities. Maintenance shall include equipment purchases, used primarily in the maintenance of

infrastructure and park facilities, and expenditures related to preventative maintenance of capital assets. Renovation includes the replacement of depreciable assets, including furnishings, and purchase of depreciable assets which enhance the quality of the parks.

- (2) In no case shall the moneys from the fund be expended on:
  - (a) New capital project construction;
  - (b) Any new maintenance or renovation project estimated to cost four hundred thousand dollars (\$400,000) or more in cash or other consideration; or
  - (c) Any new item of equipment estimated to cost one hundred thousand dollars (\$100,000) or more in cash or other consideration.
- (3) Moneys in the park capital maintenance and renovation fund may be used to provide additional funding for any capital project, as defined in KRS 45.750, that received line item authorization from the General Assembly in any executive branch budget bill only if the state budget director or the director's designee submits the proposed allocation to the Capital Projects and Bond Oversight Committee at least fourteen (14) days prior to the committee meeting, in accordance with the provisions of KRS 45.800.
- (4) Notwithstanding the provisions of KRS 45.760(6)~~(13)~~, moneys in the park capital maintenance and renovation fund shall not be used to provide additional funding for any capital project, as defined in KRS 45.750, that received line item authorization from the General Assembly in any executive branch budget bill, and that has already received maximum additional funding as permitted by KRS 45.760(6)~~(13)~~ unless the state budget director or the director's designee submits the proposed allocation to the Capital Projects and Bond Oversight Committee at least fourteen (14) days prior to the committee meeting, in accordance with the provisions of KRS 45.800. In addition to the requirements of KRS 45.800, the submission shall include a written certification that:
  - (a) Due to extraordinary circumstances, which shall be described, additional funds are necessary for the project to be completed in a manner that will allow it to serve its intended purpose; and
  - (b) The use of funds from the parks capital maintenance and renovation fund do not unduly compromise the routine maintenance and renovation needs that the fund was created to address.
- (5) The commissioner shall, by September 1 of each year, report to the Legislative Research Commission the receipts, expenditures, and any amounts carried forward for the fiscal year ending on June 30 of that year from the fund established in KRS 148.800.

➔Section 39. KRS 175.780 is amended to read as follows:

~~{(1) In order }~~To provide for the construction, reconstruction, and relocation of economic development road projects, the authority is hereby authorized and empowered, subject to the limitations contained in ~~a~~~~{the biennial}~~ branch budget bill *as defined in Section 1 of this Act*, under and pursuant to the terms and provisions of a written agreement or agreements with the cabinet, to construct, reconstruct, relocate, finance, and operate economic development road projects, to lease such projects to the cabinet, and to issue economic development road revenue bonds or notes of the authority to finance such projects. In the planning, construction, and financing of any economic development road project, the authority and the cabinet shall, subject to the provisions of KRS 175.750 to 175.810, have and use all authority, procedures, and rights provided by the provisions of KRS 175.410 to 175.690, inclusive.

~~{(2) Subject to the limitations contained in the biennial branch budget bills, the turnpike authority is hereby authorized to issue revenue bonds or notes in the amount of six hundred million dollars (\$600,000,000), exclusive of any costs incurred in the issuance of the bond or notes, amounts necessary to fund a debt service reserve fund, or capitalized interest on the bonds or notes, or both, for the purpose of financing economic development road projects. The projects to be financed by these bonds or notes shall be the following projects limited to the costs established by this subsection:~~

Route	Total Project Cost
(a) US 60	\$ 39,250,000;
(b) US 68	\$174,915,000;

~~the projects authorized by this paragraph shall be for the segments of US 68 from Bowling Green to Cadiz as submitted by the Transportation Cabinet in the 1990 Highway Construction Plan, except that funding shall be used for completion of the southern corridor of the US 68 By pass in Christian County;~~

~~(c) US 127 \$139,560,000;~~

~~(d) US 119, Letcher County, Pine~~

~~Mountain Section \$ 5,500,000;~~

~~(e) US 460 \$ 11,500,000;~~

~~(f) AA HWY \$114,355,000;~~

~~(g) US 25E \$ 52,950,000;~~

~~(h) US 23 \$161,700,000.~~

~~The authority may expend funds in excess of the total project cost, but shall not exceed the total cost by more than ten percent (10%). If any route is completed at a cost less than the amount specified by this subsection, the authority shall utilize the remainder of the funds for the sole purpose of completion of projects as specified in this subsection regardless of whether project costs exceed the ten percent (10%) requirement.~~

~~(3) The proceeds of the bonds issued under this authorization shall be used solely for the payment of the cost of the economic development road projects for which these bonds shall have been issued, as provided in subsection (2) of this section. The authority shall provide this restriction in the proceedings and preliminary documents authorizing the issuance of the bonds and in the trust indenture securing the same. Any refunding of such bonds by the authority shall also provide such restriction. Any proceeds of the bonds issued under this authorization remaining after the completion of the projects for which these bonds shall have been issued shall be transferred to the bond service account.~~

~~(4) (a) Prior to the issuance of the revenue bonds or notes authorized by this section, the turnpike authority shall furnish to the Capital Projects and Bond Oversight Committee and the Interim Joint Committee on Appropriations and Revenue, and make available to the public, a listing of all costs associated, either directly or indirectly, with the issuance of the revenue bonds or notes. The costs shall be itemized as to amount and name of payee, and shall include fees or commissions paid to, or anticipated to be paid to, issuers, underwriters, placement agents and advisors, financial advisors, remarketing agents, credit enhancers, trustees, accountants, and the counsel of all such persons, bond counsel and special tax counsel, and shall include the economic benefits received or anticipated to be received by any other persons from any source in return for services performed relating to the issuance of the bonds or notes. Changes in amounts or names of payees or recipients, or additions of amounts or names of payees or recipients, to the listing furnished and made available pursuant to this paragraph, shall be furnished to the Capital Projects and Bond Oversight Committee and the Interim Joint Committee on Appropriations and Revenue and made available to the public within three (3) days following the change.~~

~~(b) The costs required to be furnished under the provisions of paragraph (a) of this subsection shall not include the payment of wages or expenses to full time, permanent employees of the Commonwealth of Kentucky.]~~

➔Section 40. KRS 177.250 is amended to read as follows:

- (1) For the purposes of KRS 177.220 to 177.310, the highway authorities of the state, county, or city may acquire private or public property and property rights for limited access facilities and service roads, including rights of access, air, view, and light, by gift, devise, purchase, or condemnation in the same manner as such units are authorized by law to acquire property or property rights in connection with highways and streets within their respective jurisdiction. Except as provided in subsection (2) of this section, all property rights acquired under the provisions of KRS 177.220 to 177.310 shall be in fee simple. In connection with the acquisition of property or property rights for any limited access facility or portion thereof, or service road in connection therewith, the state, county, or city highway authority may, in its discretion, acquire an entire lot, block, or tract of land, if by so doing, the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for the right-of-way proper.
- (2) A city, county, or urban-county independently, or any combination of a city, county, or urban-county that have entered into an interlocal cooperative agreement under KRS 65.210 to 65.300, may purchase options to acquire

property or property rights on highways or streets within their respective jurisdictions if the property or property rights to be acquired are for highway projects included in:

- (a) The most recent twenty (20) year statewide transportation plan adopted by the Transportation Cabinet and submitted to the Federal Highway Administration;
  - (b) The most recent six (6) year ~~road~~[highway] plan enacted by the General Assembly;
  - (c) The most recent long-range transportation plan adopted by a metropolitan planning organization and submitted to the Transportation Cabinet; or
  - (d) The most recent recommendations of an area development district transportation committee that have been submitted to the Transportation Cabinet.
- (3) The secretary of the Transportation Cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish guidelines governing the purchase of options under subsection (2) of this section.

➔Section 41. KRS 224.43-505 is amended to read as follows:

- (1) A trust fund known as the Kentucky pride fund is hereby established in the State Treasury to receive money collected from environmental remediation fees established in KRS 224.43-500. The fund shall be used to accomplish the purposes established in this section. Any money accruing to the fund in any fiscal year shall not lapse but shall be carried forward to the next fiscal year. The fund may also receive state appropriations, gifts, grants, and federal funds. All interest earned on money in the fund shall be credited to the fund.
- (2) The cabinet shall administer the Kentucky pride fund as provided by this section and any administrative regulations promulgated pursuant thereto. Money from the fund received by the cabinet shall be distributed as follows:
  - (a) Five million dollars (\$5,000,000) of the money deposited into the fund each year shall be retained by the cabinet, subject to the following conditions:
    1. The cabinet may use up to two and one-half million dollars (\$2,500,000) of the money deposited into the fund as necessary for direct costs associated with site identification, characterization, and corrective action assessments of solid waste disposal sites and facilities that have ceased accepting waste before July 1, 1992, including former permitted municipal solid waste disposal facilities or abandoned solid waste disposal sites or facilities. The cabinet shall prioritize the sites and facilities based on risks to human health, safety, and the environment, and develop an implementation plan for closure and remediation of those sites and facilities. Funds may be utilized to begin design and implementation of proper closure and corrective action for those sites and facilities with unabated pending violations.
    2. The cabinet shall suspend until July, 2006, enforcement activity regarding landfill closure and remediation obligations against formerly permitted municipal solid waste disposal facilities owned by a city or county that ceased accepting waste prior to July 1, 1992, except as necessary to abate an environmental emergency.
    3. Two and one-half million dollars (\$2,500,000) per year shall be used to pay debt service on bonds sold by the Kentucky Infrastructure Authority in the amount of at least twenty-five million dollars (\$25,000,000), the proceeds from which were deposited into the Kentucky pride fund established in this section and utilized for undertaking closure and corrective action at formerly permitted solid waste disposal facilities or abandoned solid waste sites or facilities that ceased accepting waste prior to July 1, 1992, which pose the most significant environmental or human health risk. Moneys not appropriated for the identification and characterization of orphaned or abandoned landfills, or debt service, may be used for the elimination of illegal open dumps, direct costs associated with the closure of orphaned landfills, recycling grants, household hazardous waste grants, or additional debt service.
  - (b) The interest on all moneys deposited into the fund, including unused debt services, shall be distributed annually in an amount not to exceed one million dollars (\$1,000,000) to the Kentucky Environmental Education Council for implementation of the environmental education center component of the Environmental Education Master Plan.

- (c) The remaining balance of the funds from the environmental remediation fee established in KRS 224.43-500, plus any unspent interest revenues, shall be utilized by the cabinet for grants to counties for the elimination of illegal open dumps and to establish a recycling and household hazardous waste grants program. Any county, waste management district, city, urban-county government, or other political subdivision of the state shall be eligible to apply for recycling and household hazardous waste grants under this program.
- (d) Two and one-half million dollars (\$2,500,000) shall be transferred in each of the fiscal years 2002-03 and 2003-04 and annually thereafter from the road fund established in KRS 48.010(15)~~(13)~~(g) and two and one-half million dollars (\$2,500,000) shall be transferred in each of the fiscal years 2002-03 and 2003-04 and annually thereafter from the highway construction contingency fund to the Kentucky pride fund established in this section, to be reserved and distributed annually for anti-litter control programs with distributions to be made as follows:
1. Thirty-three and one-third percent (33-1/3%) of the money shall be distributed annually based on each county's miles of public roads as a percentage of the total miles of public roads in the Commonwealth at the time of distribution;
  2. Thirty-three and one-third percent (33-1/3%) of the money shall be distributed annually based on the county's rural population as a percentage of the total rural population of the Commonwealth at the time of distribution. "Rural population" means the population residing outside a city, town, or urban area with a population of two thousand five hundred (2,500) persons or more;
  3. Thirty-three and one-third percent (33-1/3%) of the money shall be distributed annually based on the county's population as a percentage of the total population of the Commonwealth at the time of distribution;
  4. Of the moneys apportioned to counties on the basis of miles of public roads and population as provided for in subparagraphs 1. and 3. of this paragraph, the cabinet shall provide to the participating incorporated cities within the jurisdiction of each respective county which, by ordinance or other means, provides municipal solid waste collection service, an amount of funds equal to the ratio of that city's total miles of public roads in the county and the ratio of that city's population to the population of the county, to be used for the purpose of litter cleanup on public roads within city boundaries;
  5. Moneys received by counties and cities pursuant to this paragraph shall be applied for by November 1 of the year preceding the grant distribution and shall be used to meet obligations with respect to the litter cleanup of public roads required by the provisions of KRS 224.43-345; and
  6. Litter abatement funding rejected or otherwise returned from the grant recipients shall be applied to the following year's allotment for litter abatement grants.
- (3) Any county may apply for a grant for the elimination of illegal open dumps subject to the following provisions:
- (a) The cabinet first shall prioritize expenditures from this fund among those counties with approved solid waste management plans in order to address those illegal open dumps posing the most significant public health and environmental risks; and
  - (b) The cabinet shall provide grants to counties for eliminating illegal open dumps. To be eligible for grant funding, the applicant shall:
    1. Establish an effective universal municipal solid waste collection service that is available to all county residences and businesses;
    2. Employ a solid waste coordinator with enforcement powers;
    3. Remain in compliance with an approved solid waste management plan under this chapter;
    4. Enter into agreement with the cabinet to provide a twenty-five percent (25%) match which may be in kind to the grant amount and comply with the grant criteria, except that the grant match may be waived for illegal dump cleanups projected to cost more than fifty thousand dollars (\$50,000);
    5. Agree to use all legal methods at their disposal to collect delinquent solid waste collection fees; and

6. Establish a committee to be designated as the clean county committee, composed of representatives from business, schools, agriculture, homemakers, and other concerned citizens, to increase awareness and develop education and enforcement strategies to keep the county free of litter and illegal open dumps.
- (4) The cabinet shall impose the following requirements for recycling and household hazardous waste management grants to counties, waste management districts, cities, urban-county governments, or other political subdivisions of the state:
  - (a) Each grantee shall provide a twenty-five percent (25%) match to the grant amount which may be in kind and shall comply with the grant criteria;
  - (b) Each grantee shall demonstrate that the proposed project will remain financially viable after grant funds have been expended;
  - (c) The grantee shall demonstrate that the service added by the project is needed and would otherwise be unavailable within the proposed service area; and
  - (d) Projects that create opportunities for regional recycling or regional household hazardous waste management shall be given priority.
- (5) Counties that meet the requirements set out above in subsection (3) of this section shall be provided the following incentives and rewards by the cabinet:
  - (a) Extra points when applying for Land and Water Conservation Fund grants, National Recreation Trails Funds grants, and funding from the state-funded Community Rivers and Streams Program; and
  - (b) Priority consideration for funds from the Division of Conservation State Cost Share Program for dumps on farmland and the Waste Tire Trust Fund for tire dumps.
- (6) The cabinet shall be reimbursed for reasonable costs related to the implementation of the provisions of this section, not to exceed seven hundred fifty thousand dollars (\$750,000) annually.

➔Section 42. KRS 446.010 is amended to read as follows:

As used in the statute laws of this state, unless the context requires otherwise:

- (1) "Action" includes all proceedings in any court of this state;
- (2) "Animal" includes every warm-blooded living creature except a human being;
- (3) "Attorney" means attorney-at-law;
- (4) "Bequeath" and "devise" mean the same thing;
- (5) "Bequest" and "legacy" mean the same thing, and embrace either real or personal estate, or both;
- (6) "Cattle" includes horse, mule, ass, cow, ox, sheep, hog, or goat of any age or sex;
- (7) "Company" may extend and be applied to any corporation, company, person, partnership, joint stock company, or association;
- (8) "Corporation" may extend and be applied to any corporation, company, partnership, joint stock company, or association;
- (9) "Cruelty" as applied to animals includes every act or omission whereby unjustifiable physical pain, suffering, or death is caused or permitted;
- (10) "Directors," when applied to corporations, includes managers or trustees;
- (11) "Domestic," when applied to corporations, partnerships, limited partnerships, or limited liability companies, means all those incorporated or formed by authority of this state;
- (12) "Domestic animal" means any animal converted to domestic habitat;
- (13) "Federal" refers to the United States;
- (14) "Foreign," when applied to corporations, partnerships, limited partnerships, or limited liability companies, includes all those incorporated or formed by authority of any other state;

- (15) "Generally accepted accounting principles" are those uniform minimum standards of and guidelines to financial accounting and reporting as adopted by the National Council on Governmental Accounting, under the auspices of the Municipal Finance Officers Association and by the Financial Accounting Standards Board, under the auspices of the American Institute of Certified Public Accountants;
- (16) "Humane society," "society," or "Society for the Prevention of Cruelty to Animals," means any nonprofit corporation, organized under the laws of this state and having as its primary purpose the prevention of cruelty to animals;
- (17) "Issue," as applied to the descent of real estate, includes all the lawful lineal descendants of the ancestors;
- (18) "Land" or "real estate" includes lands, tenements, and hereditaments and all rights thereto and interest therein, other than a chattel interest;
- (19) "Legatee" and "devisee" convey the same idea;
- (20) "May" is permissive;
- (21) "Month" means calendar month;
- (22) "Oath" includes "affirmation" in all cases in which an affirmation may be substituted for an oath;
- (23) "Owner" when applied to any animal, means any person having a property interest in such animal;
- (24) "Partnership" includes both general and limited partnerships;
- (25) "Peace officer" includes sheriffs, constables, coroners, jailers, metropolitan and urban-county government correctional officers, marshals, policemen, and other persons with similar authority to make arrests;
- (26) "Penitentiary" includes all of the state penal institutions except the houses of reform;
- (27) "Person" may extend and be applied to bodies-politic and corporate, societies, communities, the public generally, individuals, partnerships, registered limited liability partnerships, joint stock companies, and limited liability companies;
- (28) "Personal estate" includes chattels, real and other estate that passes to the personal representative upon the owner dying intestate;
- (29) "Regular election" means the election in even-numbered years at which members of Congress are elected and the election in odd-numbered years at which state officers are elected;
- (30) "Shall" is mandatory;
- (31) "State" when applied to a part of the United States, includes territories, outlying possessions, and the District of Columbia; "any other state" includes any state, territory, outlying possession, the District of Columbia, and any foreign government or country;
- (32) "State funds" or "public funds" means sums actually received in cash or negotiable instruments from all sources unless otherwise described by any state agency, state-owned corporation, university, department, cabinet, fiduciary for the benefit of any form of state organization, authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization whether or not the money has ever been paid into the Treasury and whether or not the money is still in the Treasury if the money is controlled by any form of state organization, except for those funds the management of which is to be reported to the Legislative Research Commission pursuant to KRS 42.600, 42.605, and 42.615;
- (33) "Sworn" includes "affirmed" in all cases in which an affirmation may be substituted for an oath;
- (34) "United States" includes territories, outlying possessions, and the District of Columbia;
- (35) "Vacancy in office," or any equivalent phrase, means such as exists when there is an unexpired part of a term of office without a lawful incumbent therein, or when the person elected or appointed to an office fails to qualify according to law, or when there has been no election to fill the office at the time appointed by law; it applies whether the vacancy is occasioned by death, resignation, removal from the state, county or district, or otherwise;
- (36) "Violate" includes failure to comply with;
- (37) "Will" includes codicils; "last will" means last will and testament;

- (38) "Year" means calendar year;
- (39) "City" includes town;
- (40) Appropriation-related terms are defined as follows:
- (a) "Appropriation" means an authorization by the General Assembly to expend, from public funds, a sum of money not in excess of the sum specified, for the purposes specified in the authorization and under the procedure prescribed in KRS Chapter 48;
  - (b) "Appropriation provision" means a section of any enactment by the General Assembly which is not provided for by KRS Chapter 48 and which authorizes the expenditure of public funds other than by a general appropriation bill;
  - (c) "General appropriation bill" means an enactment by the General Assembly that authorizes the expenditure of public funds in ~~a~~~~[an executive, judicial, or legislative]~~ branch budget bill as provided for in KRS Chapter 48;
- (41) "Mediation" means a nonadversarial process in which a neutral third party encourages and helps disputing parties reach a mutually acceptable agreement. Recommendations by mediators are not binding on the parties unless the parties enter into a settlement agreement incorporating the recommendations;~~and~~
- (42) "Biennium" means the two (2) year period commencing on July 1 in each even-numbered year and ending on June 30 in the ensuing even-numbered year; *and*
- (43) ***"Branch budget bill" or "branch budget" means an enactment by the General Assembly which provides appropriations and establishes fiscal policies and conditions for the biennial financial plan for the judicial branch, the legislative branch, and the executive branch, which shall include a separate budget bill for the Transportation Cabinet.***

➔Section 43. KRS 48.111 is amended to read as follows:

- (1) The Governor shall include in the executive branch budget recommendation and in the draft branch budget bill for the executive branch submitted to each even-numbered-year regular session of the General Assembly pursuant to KRS 48.110, for the biennium period beginning July 1, 1992, and for each biennium thereafter, a recommended program for rental of any space for which the annual rental cost will exceed two hundred thousand dollars (\$200,000).
- (2) The recommended program for leased space shall include:
  - (a) A summary description of each specific two hundred thousand dollar (\$200,000) lease project recommended for funding during the biennium; and
  - (b) For each project:
    - 1. The name of the agency for which space will be leased;
    - 2. The purpose and justification for the lease;
    - 3. Whether the lease contains a purchase option which will be exercised during the biennium pursuant to KRS 56.806(4) and the estimated purchase price;
    - 4.
      - a. Whether the lease contains a lease-purchase which will be completed during the biennium pursuant to KRS 56.806(5) prior to the total amortization, through lease payments, of the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease; and
      - b. The estimated sum of money that will have to be paid in addition to rent paid to complete the purchase;
    - 5. The estimated cost of the lease; and
    - 6. The recommended sources of funds.
- (3) All information required by subsection (2) of this section shall be included in the executive branch budget recommendation. The branch budget bill for the executive branch shall contain only the information specified in subparagraphs 1. and 2. of subsection (2)(b) of this section.

- (4) Except as provided in subsection (5) of this section, no lease with an annual rental cost which will exceed two hundred thousand dollars (\$200,000) shall be executed unless the lease has been identified and included in the branch budget bill. The branch budget bill for the executive branch shall authorize the expenditure by the budget unit that will occupy the premises.
- (5) A lease with an annual rental cost exceeding two hundred thousand dollars (\$200,000) may be authorized even though it is not specifically listed in the biennial budget report and branch budget bill, subject to the following conditions and procedures:
- (a) A lease is awarded as the result of the consolidation of leases in which case, in addition to subsection (6) of this section, the provisions of KRS 56.803 and 56.823(2) or of KRS 56.805(2) and 56.823(3) shall apply, as appropriate; or
  - (b) A lease is awarded as the result of an agency occupying substantially less space than it should, under the standards for space set by the Department for Facilities Management, in which case, in addition to subsection (6) of this section, the provisions of KRS 56.803 and 56.823(2) or of KRS 56.805(2) and 56.823(3) shall apply, as appropriate. The space allocated under the new lease shall not exceed the space which should be allocated pursuant to the standards for space; or
  - (c) A lease with an annual rental cost of less than two hundred thousand dollars (\$200,000) is renewed or replaced for an annual rental cost that exceeds two hundred thousand dollars (\$200,000), but only if that request and subsequent renewal or replacement lease is:
    - 1. From the same state agency lessee whose initial lease was under two hundred thousand dollars (\$200,000);
    - 2. For the same or substantially the same square footage as the initial lease that was under two hundred thousand dollars (\$200,000);
    - 3. The result of the competitive leasing process authorized by KRS 56.803;
    - 4. For an annual lease payment of less than two hundred and fifty thousand dollars (\$250,000); and
    - 5. Effective only until June 30 of the next even-numbered year unless authorized in the biennial budget report and branch budget bill; or
  - (d) A lease is awarded as the result of an emergency in which case the provisions of KRS 56.805(3) and (4) and KRS 56.823(5) shall apply; or
  - (e)
    - 1. Fifty percent (50%) or more of the actual cost shall be funded by federal or private funds; and
    - 2. Money specifically budgeted and appropriated by the General Assembly for another purpose shall not be allotted or reallocated for expenditure on the lease. Money utilized shall not jeopardize any existing program and shall not require the use of current general funds specifically dedicated to existing programs; and
    - 3. The Finance and Administration Cabinet shall comply with the requirements of subsection (6) of this section.
- (6) (a) No later than five (5) business days after an advertisement for lease proposals pursuant to paragraph (a) or (b) of subsection (5) of this section, the cabinet shall provide the Capital Projects and Bond Oversight Committee with a copy of the advertisement and shall state in writing to the committee that the copy is being provided in compliance with this paragraph.
- (b) Prior to final authorization of a lease pursuant to paragraph (e) of subsection (5) of this section, the cabinet shall report to the Capital Projects and Bond Oversight Committee:
- 1. The name of the agency for which space will be leased;
  - 2. The purpose and justification for the lease;
  - 3. The estimated cost of the lease;
  - 4. The source of funds; and
  - 5. Whether the requirements of paragraph (e) of subsection (5) of this section have been met.

- (c) Within thirty (30) days after the report required in paragraph (b) of this subsection has been submitted to the committee, the committee shall conduct its review and decide whether to approve or disapprove the proposed lease authorization. The Legislative Research Commission shall promptly transmit the committee's findings and determinations to the Finance and Administration Cabinet.
- (d) If the committee disapproves a proposed lease authorization, the secretary of the Finance and Administration Cabinet shall:
  - 1. Revise the proposed lease authorization to comply with the objection of the committee; or
  - 2. Cancel the proposed lease authorization; or
  - 3. Determine to proceed with the proposed lease authorization disapproved by the committee.
- (e) The decision made by the secretary of the Finance and Administration Cabinet under paragraph (d) of this subsection shall be communicated to the committee in writing within thirty (30) days of the committee's disapproval.
- (f) The Legislative Research Commission shall maintain records of the committee's disapproval of a proposed lease authorization and the cabinet's report of its actions on a disapproved proposed lease authorization. If the committee disapproves a proposed lease authorization, the Legislative Research Commission shall transmit the committee's disapproval and the cabinet's action on the disapproval to the appropriate interim joint committee of the Legislative Research Commission and to the General Assembly when next convened in an even-numbered-year regular session.
- (g) If after committee review a lease is authorized, the lease shall be awarded pursuant to the provisions of KRS 56.800 to 56.823, ~~and~~ this section, *and* KRS 43.050, ~~and KRS 48.190~~ and shall be subsequently reviewed pursuant to the appropriate subsection of KRS 56.823.

➔Section 44. KRS 56.800 is amended to read as follows:

The Finance and Administration Cabinet shall be responsible for the lease of all real property rentals required for use by all departments, agencies, and administrative bodies of the state government listed in KRS Chapter 12 that do not have statutory authority to lease property, and no lease of real property shall be binding against the Commonwealth or any agency unless made and entered into as provided in KRS 56.800 to 56.823, ~~and KRS~~ 43.050, *and* 48.111, ~~and 48.190~~.

➔Section 45. KRS 56.803 is amended to read as follows:

- (1) When an agency determines that it will need office or other space, the agency shall submit a request for the acquisition of the additional space to the Department for Facilities Management in the Finance and Administration Cabinet. Except in the case of an emergency as described at KRS 56.805(3), an agency shall submit its space request in writing to the department. In the case of an emergency, an agency shall communicate its space needs to the department pursuant to KRS 56.805(3) as soon as an agency knows that it will need the space. If the commissioner of the Department for Facilities Management determines that insufficient space has been allocated to the agency making the request and that it is appropriate to lease additional space for the agency making the request, the commissioner shall acquire the space required by lease as provided by KRS 56.800 to 56.823, ~~and KRS~~ 43.050, *and* ~~48.111, and 48.190~~.
- (2) The Department for Facilities Management shall review each agency space request to determine whether space suitable to meet the agency's reasonable needs may be available in a state-owned or occupied building. If it is determined that there is suitable space available in a state-owned or occupied building, the commissioner shall notify the agency. A copy of the notice shall be kept on file.
- (3) If it is determined that there is no suitable space available in a state-owned or occupied building, the department shall comply with the procedures set forth in this section in the leasing of space, except as otherwise provided in KRS 56.800 to 56.823, ~~and KRS~~ 43.050, *and* 48.111, ~~and 48.190~~.
- (4) The department shall draw up general requirement specifications for the space required. These general requirement specifications shall not be changed except, at the discretion of the commissioner, when the lease process is initiated again pursuant to paragraph (c) of subsection (15) of this section or pursuant to paragraph (b) of subsection (16) of this section. The general requirement specifications shall be kept on file.

- (5) (a) In soliciting the interest of lessors who have property to let in a county where space is sought, the department shall give adequate public notice to reasonably inform persons having property to let within the county of the type of space required, the general location of the property, and the number of square feet needed. The notice may include posting on the Internet or newspaper advertisements. Each notice shall contain general information concerning the agency requirements for the space sought and shall state the last time, date, and place that written responses shall be received. When it is anticipated that a lease may be negotiated containing deviations or variations from the terms and conditions of the state standard lease form prescribed by the Division of Real Properties, within the department, any deviations or variations shall be stated in the notice.
- (b) The Department for Facilities Management may use any means available to notify landlords that a notice has been given.
- (6) A property owner, or his representative, shall respond in writing on or before the time and date designated in the notice and shall state in the writing the type and location of the property, the name and address of the property owner, and the date of availability of the property. The department shall deal only with individuals who have submitted written responses on or before the time and date designated in the notice.
- (7) All written responses received on or before the time and date designated shall be opened or downloaded at the same time, publicly read or posted, and kept on file by the department.
- (8) Within ten (10) business days of the opening of written responses, the department shall transmit general requirement specifications to each person who submitted a written response on or before the time and date designated. The same general requirement specifications shall be transmitted to each person.
- (9) After the general requirement specifications have been transmitted, except as provided in paragraph (a) of subsection (13) of this section, the commissioner, and department employees under his supervision, may negotiate with persons who submitted written responses on or before the time and date designated. If in the course of negotiations, a person proposes terms and conditions of lease different from those contained in the state standard lease form which are determined to be in the Commonwealth's best interest to accept, but no mention of the acceptability thereof has been made in the notice given pursuant to subsection (5) of this section, all other persons who submitted written responses on or before the time and date designated shall be notified of the terms and conditions and shall be allowed to incorporate the terms and conditions in written proposals when submitted pursuant to subsection (12) of this section. A copy of each notice shall be kept on file.
- (10) The department shall inspect each space proposed to be leased to determine its suitability to the reasonable needs of the agency for whose use the property is sought. The owner of the property, or the owner's representative, shall provide access to the property for the inspection. A report of the findings about each property inspected shall be submitted on a site evaluation form to the commissioner of the department. Completed site evaluation forms shall be kept on file.
- (11) After the commissioner has reviewed the completed site evaluation forms, the commissioner shall inform each owner of property, or his representative, of the steps necessary to bring the property up to general and specific requirement specifications. The commissioner shall also invite each person to submit a written proposal on a form created by the Department for Facilities Management. A copy of the form shall be provided to each bidder. A written proposal shall constitute a best and final offer. The department shall not consider a written proposal unless it is submitted on a department form on or before the time and date designated.
- (12) All written proposals submitted on or before the time and date designated shall be opened at the same time, publicly identified by the name of the property owner and the location of the property, and kept on file.
- (13) Except pursuant to paragraph (b) of subsection (15) of this section, when the requirements of paragraph (a) of this subsection shall not apply, from the time that written proposals are opened until the awarding of a lease, the department:
  - (a) Shall not negotiate or agree to changes in the terms of written proposals except to correct technical errors;
  - (b) Shall log in all contacts between department employees and any person with an interest in the awarding of a lease. The log shall state the time, date, place, and a summary of the substance of each contact. Each log entry shall be signed by the department employee who was contacted. After the lease is awarded, the log shall be kept as a department record.

- (14) (a) The commissioner shall assess the proposals, taking into account factors including, but not limited to: consultation with the head of the agency for whose use the space is sought; the location and accessibility of the property to the public; its condition and state of repair; its conformity with the requirements of occupational health and safety regulations; its conformity with applicable state fire, health, safety and sanitation requirements; the proposed rental rates; utility and janitorial costs; agency moving costs; and whether the property proposed is in substantial conformity with the general and specific requirement specifications.
- (b) The commissioner shall give preference to properties in areas which have received, within the previous five (5) year period, state community development funds for revitalization if properties are offered at a competitive rate and meet the provisions of paragraph (a) of this subsection.
- (15) The commissioner, relying exclusively on his assessment made pursuant to subsection (14) of this section, shall:
- (a) Choose the best proposal in the interest of the Commonwealth;
- (b) Be permitted to negotiate with a potential lessor if he was the only responsive and responsible potential lessor who submitted a proposal; or
- (c) Except as provided in paragraph (b) of this subsection, reject all proposals when none is in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section and may, at his discretion, initiate the lease process again.
- (16) (a) The commissioner shall award or decline to award a lease to the potential lessor who submitted the best proposal pursuant to paragraph (a) of subsection (15) of this section or who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section. However, the commissioner shall not award a lease to a potential lessor who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section if that potential lessor's proposal after negotiations was not in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section, and the commissioner shall not award a lease to a person other than a potential lessor prescribed in this paragraph.
- (b) If the commissioner declines to award a lease, he may, at his discretion, initiate the lease process again.
- (17) The commissioner shall put in writing the justifications for his decisions made pursuant to subsections (15) and (16) of this section. This writing shall be kept on file.
- (18) The commissioner, all department employees under the commissioner's supervision who performed a site evaluation or negotiated a lease agreement under this section, the head of the agency that will occupy the leased space, and all agency employees who were directly involved with a site evaluation or lease negotiations shall sign separate certificates, devised by the commissioner, which shall provide the signatory with the option of certifying that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a violation of KRS 56.800 to 56.823. The Department for Facilities Management shall keep the certificates on file and shall inform state agencies of the legal requirements concerning lease certification on an annual basis.
- (19) The department shall notify each person who submitted a written response on or before the time and date designated in the public notice pursuant to subsection (6) of this section, but who was not awarded the lease, of the selected property to be leased, and that the person has a right to examine the leasing records relevant to the lease that was awarded. If the Capital Projects and Bond Oversight Committee, pursuant to KRS 56.823(2), will review the awarding of a lease, each notice shall state that fact. A copy of each notice shall be kept on file.
- (20) Prior to finalization of the lease, the department or the leasing agency shall inspect the property to ensure that any changes described in subsection (11) of this section necessary to bring the property up to specifications have been completed in a manner satisfactory to the agency or department. At the conclusion of the inspection, the owner shall be advised in writing by the department either that the property is approved for occupancy and the lease may be finalized, or that there remain changes to be completed or corrected before the lease may be finalized.

➔Section 46. KRS 56.814 is amended to read as follows:

- (1) No officer or employee of any state agency shall engage in any act or make any representation or commitment to any person relative to the lease of any real property by the state without specific written authorization from and approval by the Finance and Administration Cabinet and neither the state nor the department shall be bound by the act, representation, or commitment unless so authorized and approved.
- (2) (a) No officer or employee of any state agency shall disclose to any person or firm who might reasonably be expected to submit a proposal, any approved plans by the department for the lease of real property for which public notice is required under KRS 56.800 to 56.823, ~~and KRS~~ 43.050, **and** 48.111 ~~and 48.190~~ prior to the public notice. Discussions of approved leasing plans may be held after public notice with persons interested in submitting a proposal pertaining to the space requirements.
- (b) If all of the proposals, submitted in response to the advertisement referred to in paragraph (a) of this subsection, are rejected, then the requirements of paragraph (a) shall govern disclosure before, and discussions after, new advertisements are placed.

➔Section 47. KRS 56.822 is amended to read as follows:

Judicial review of the action of the Finance and Administration Cabinet and its secretary and the Department for Facilities Management and its commissioner in the award, or modification, of a lease pursuant to KRS 56.800 to 56.823, ~~and KRS~~ 43.050, **and** 48.111 ~~and 48.190~~ shall be limited to determining whether a lease or modification to a lease was procured by fraud or was awarded arbitrarily or capriciously.

➔Section 48. KRS 56.823 is amended to read as follows:

- (1) The Finance and Administration Cabinet shall report information on leases and lease modifications awarded pursuant to KRS 56.800 to 56.823, ~~and KRS~~ 43.050, **and** 48.111 ~~and 48.190~~ to the Capital Projects and Bond Oversight Committee as required by this section.
- (2) Any lease awarded pursuant to KRS 56.803, including all lease renewals except automatic renewals permitted under KRS 56.806(1), for which the annual rental cost will exceed one hundred thousand dollars (\$100,000) shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution. The report shall include:
  - (a) The name of the agency that will occupy the premises;
  - (b) The name of the lessor;
  - (c) The terms of the lease;
  - (d) The reason for the lease;
  - (e) A copy of the writing required by KRS 56.803(17);
  - (f) A statement as to whether the Finance and Administration Cabinet complied with the requirements established in KRS 56.800 to 56.823, ~~and KRS~~ 43.050, 48.111, and 48.190. If the cabinet has not complied with any requirement, the cabinet shall explain why;
  - (g) An explanation of why the Finance and Administration Cabinet chose this lessor over his competition; and
  - (h) A cost comparison between the cost per square foot of the leased space and the average cost per square foot of comparable space the state leases in the same county. If there are factors which make the comparison misleading, the cabinet shall inform the committee of these factors.
- (3) Any lease that incorporates a lease-purchase pursuant to KRS 56.806(5) shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution.
  - (a) If a lease is awarded pursuant to KRS 56.803, the report shall include the:
    1. Fair market value of the property as of the time the lessor and the Commonwealth entered into the lease;
    2. Name and qualifications of each of the two (2) real estate appraisers who determined the fair market value;
    3. Appraisal technique each appraiser employed; and
    4. Information required by subsection (2) of this section.

- (b) 1. Except as provided in subparagraph 2. of this paragraph, if a lease is awarded pursuant to KRS 56.805(2), the report shall include the:
  - a. Fair market value of the property at the time the lessor and the Commonwealth entered into the lease;
  - b. Name and qualifications of each of the two (2) real estate appraisers who determined the fair market value;
  - c. Appraisal technique each appraiser employed;
  - d. Information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this section; and
  - e. Procedure the department followed to obtain the lease.
2. If the federal government is the lessor, the report shall include the substance of the lease-purchase.
- (4) Any lease awarded pursuant to KRS 56.805(2), including all lease renewals except automatic renewals permitted under KRS 56.806(1), for which the annual rental cost will exceed one hundred thousand dollars (\$100,000) shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution. The report shall state the information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this section and the procedure the department followed to obtain the lease. The report shall also include a copy of the writing required by KRS 56.805(2).
- (5) Any lease awarded as the result of an emergency described at KRS 56.805(3) shall be reported to the Capital Projects and Bond Oversight Committee within thirty (30) days after execution. The report shall include a copy of the certificate or the certificate and the Governor's authorization, as appropriate, kept on file pursuant to KRS 56.805(4) and shall further state:
  - (a) The information required by paragraphs (a), (b), (f), (g), and (h) of subsection (2) of this section;
  - (b) The terms of lease before and after the emergency; and
  - (c) The procedure the department followed after the emergency to obtain a lease.
- (6) Any built-to-suit lease awarded pursuant to KRS 56.8169 shall be reported to the Capital Projects and Bond Oversight Committee after a proposed lease is arrived at but before execution. The report shall state the information required by paragraphs (a), (b), (c), (d), (f), (g), and (h) of subsection (2) of this section. The report shall also include:
  - (a) The written finding and Governor's approval required by KRS 56.8161;
  - (b) The selection committee's ranking of firms required by KRS 56.8169(15)(a);
  - (c) The written reason for requesting best-and-final offers, if best-and-final offers are requested, made pursuant to KRS 56.8169(16)(b);
  - (d) The selection committee's selection of the best best-and-final offer, if best-and-final offers are requested, made pursuant to KRS 56.8169(16)(d);
  - (e) The certificates signed pursuant to KRS 56.8171(2); and
  - (f) The report prepared by the employee of the Auditor of Public Accounts pursuant to KRS 56.8171(3).
- (7) If the Finance and Administration Cabinet decides to exercise an option to purchase pursuant to KRS 56.806(4), the cabinet shall report to the Capital Projects and Bond Oversight Committee after the decision is reached but before the purchase occurs. The report shall include the:
  - (a) Fair market value of the property;
  - (b) Option price;
  - (c) Name and qualifications of each of the two (2) real estate appraisers who set the fair market value;
  - (d) Appraisal technique each appraiser employed; and

- (e) Rent paid by the Commonwealth prior to the exercise of the option.
- (8) (a) When, pursuant to KRS 56.806(5)(a), the Finance and Administration Cabinet attempts to complete a lease-purchase through lease payments totally amortizing the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease, the cabinet shall report to the Capital Projects and Bond Oversight Committee no more than ninety (90) days before the final lease payment. The report shall include the:
1. Fair market value of the property at the time the lessor and the Commonwealth entered into the lease;
  2. Name and qualifications of each of the two (2) real estate appraisers who set the fair market value;
  3. Appraisal technique each appraiser employed; and
  4. Rent paid by the Commonwealth toward the purchase.
- (b) When, pursuant to KRS 56.806(5)(b), the Finance and Administration Cabinet attempts to complete a lease-purchase, the cabinet shall report to the Capital Projects and Bond Oversight Committee no more than ninety (90) days before the final lease payment. The report shall include the terms of the lease purchase.
- (9) When, pursuant to KRS 56.806(5), the Finance and Administration Cabinet decides to attempt to complete a lease-purchase prior to the total amortization, through lease payments, of the fair market value of the leased property as of the time the lessor and the Commonwealth entered into the lease, the cabinet shall report to the Capital Projects and Bond Oversight Committee after the decision is reached but before the purchase occurs. The report shall state the information required by paragraph (a) or (b) of subsection (8) of this section as appropriate. The report shall also include the sum of money that must be paid in addition to rent paid, in order to complete the purchase.
- (10) If the Finance and Administration Cabinet, pursuant to KRS 56.806(5), includes in a lease the lease-purchase of the leased property and thereafter becomes aware that a purchase will not be achieved, within thirty (30) days after the cabinet becomes aware, it shall notify the Capital Projects and Bond Oversight Committee of the circumstances preventing the purchase.
- (11) (a) Except in the case of an emergency as provided in paragraph (b) of this subsection, any modification to an existing lease, made pursuant to KRS 56.813, that is less than fifty thousand dollars (\$50,000) shall be reported to the Capital Projects and Bond Oversight Committee within thirty (30) days after execution, and any modification to an existing lease, made pursuant to KRS 56.813, that is fifty thousand dollars (\$50,000) or more shall be reported to the Capital Projects and Bond Oversight Committee before execution. In either case, the report shall consist of:
1. The terms of the lease before and after modification;
  2. The reason for the modification;
  3. The name of the lessor;
  4. Any comments received from the public pursuant to KRS 56.813(4); and
  5. A statement as to whether the Finance and Administration Cabinet complied with the requirements in KRS 56.813. If the cabinet has not complied with any requirement, the cabinet shall explain why.
- (b) Any modification to an existing lease which is required because of an emergency as described at KRS 56.805(3) shall be reported to the Capital Projects and Bond Oversight Committee within thirty (30) days after execution. The report shall include a copy of the certificate or the certificate and the Governor's authorization, as appropriate, kept on file pursuant to KRS 56.805(4) and shall further state:
1. The terms of the lease before and after modification;
  2. The name of the lessor;
  3. Any comments received from the public pursuant to KRS 56.813(4); and

4. A statement that the Finance and Administration Cabinet complied with the requirements in KRS 56.805(3) and (4) and in KRS 56.813. If the cabinet has not complied with any requirement, the cabinet shall explain why.

➔Section 49. The following KRS sections are repealed:

- 45.245 Submission of six (6) year road plan and appropriations to General Assembly.
- 45.246 Compliance with KRS 45.245 to 45.247.
- 48.117 Budget planning report.
- 48.190 Capital construction and space rental recommendations.
- 176.419 Definition of "project" and "six (6) year road plan" for KRS 45.245, 45.246, 176.420, 176.430, and 176.440.
- 176.420 Continuing study of highway needs by Department of Highways -- Submission of six (6) year road plan to General Assembly -- Electronic version.

**Signed by the Governor March 24, 2009.**

## CHAPTER 79

### (HB 452)

AN ACT relating to mining around oil and gas wells.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 352 IS CREATED TO READ AS FOLLOWS:

*All maps and plans required under this chapter shall be submitted by the coal operator providing coordinates in feet units using NAD 83, with Single Zone Projection, as those terms are defined in Section 12 of this Act.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

*It is hereby declared the public policy of the Commonwealth to provide for the safety of underground coal miners employed in areas near or adjacent to oil and gas exploration activities while furthering the policy of the Commonwealth as stated in KRS 353.500 with respect to the conservation and encouragement of exploration and development of oil and gas resources.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *In order to collect and provide accurate information regarding the location of a well drilled through a workable coal bed, the well operator shall, within thirty (30) days following the drilling of the well, provide to the division a plat which shows the well's as-drilled location and elevation. The plat shall be certified as accurate by a professional land surveyor licensed in accordance with the provisions of KRS Chapter 322 and shall be provided in addition to the plat accompanying the application for permit, which is required under KRS 353.590(4). The as-drilled well location plat required by this section shall provide coordinates in feet units, using NAD 83, with Single Zone Projection as those terms are defined in Section 14 of this Act.*
- (2) *A well shall be deemed to be in compliance with applicable permit requirements if the as-drilled location of the well is:*
  - (a) *At the surface, within fifteen (15) feet of the location specified in the permit to drill; and*
  - (b) *Drilled through the base of the lowest workable coal bed within one hundred fifty (150) feet from the true vertical of the as-drilled surface location.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *Within ten (10) days of the drilling of the well, the well operator shall have performed, at its expense, a directional survey for any well drilled in an active mining area or an inclination survey for any well drilled through a workable coal bed that is not in an active mining area.*

- (2) *If, as a result of the as-drilled well location plat prepared pursuant to Section 2 of this Act or the directional or inclination survey performed under subsection (1) of this section, it is determined that a well or any portion of a well has been drilled at either a surface location or a subsurface location at the base of the lowest workable coal bed that is not in compliance with the allowable distances established in subsection (2) of Section 3 of this Act, as well as the spacing requirements of KRS 353.610, then the well operator shall promptly notify the Division of Oil and Gas Conservation of the noncompliance. The division shall order the well operator to remediate the noncompliance to bring the well within the allowable distances that have been exceeded. If the division determines that the well's permit conditions cannot be satisfied by remediation or that the well operator is unable to satisfactorily meet the ordered remediation, then the division shall order the well to be plugged and abandoned.*
- (3) *No remediation shall be required under subsection (2) of this section if:*
- (a) *A directional survey indicates that the well is not in compliance with the allowable distance established in paragraph (b) of subsection (2) of Section 3 of this Act, but the well is in compliance with the spacing requirements of KRS 353.610; and*
  - (b) *The well operator receives a waiver for the noncompliance from the coal operator or permittee.*
- (4) *No remediation shall be required under subsection (2) of this section if:*
- (a) *An inclination survey indicates that the well is not in compliance with the allowable distances established in subsection (2) of Section 3 of this Act, but the well is in compliance with the spacing requirements of KRS 353.610; and*
  - (b) *The well operator performs or causes to be performed a directional survey to identify the correct subsurface location of the wellbore.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

*Upon the request of a coal operator, a well operator shall perform or cause to be performed a directional survey on any well drilled outside an active mining area within sixty (60) days of the request. The coal operator shall pay all actual costs associated with the survey. The coal operator shall indemnify the well operator for any damages that are incurred as a result of the performance of the directional survey, but the coal operator shall not be liable for any loss of revenue incurred as a result of a reasonable shut-in period during which the directional survey is conducted.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

*A coal, oil, or gas operator that has a directional or inclination survey performed pursuant to Sections 3 and 4 of this Act shall provide a copy of the survey to the Division of Oil and Gas Conservation. The division shall be responsible for reasonably maintaining and updating all information required by this chapter regarding oil and gas wells.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

- (1) *For gathering lines installed across terrain with a slope of greater than twenty degrees (20°), the well operator shall mark the location of the gathering lines with line markers at interval distances not to exceed two hundred fifty (250) feet.*
- (2) *The Division of Oil and Gas Conservation shall make available on its Web site maps or other relevant information showing the location of gathering lines, as filed by the well operator, within thirty (30) days of the information being filed.*
- (3) *Prior to the issuance of a permit to drill, the division shall determine whether the proposed well will intersect an active mining area by reviewing the pertinent mine maps filed with the Office of Mine Safety and Licensing. If the proposed well will intersect with an active mining area, the division shall:*
- (a) *Determine whether the coal mine permittee has been properly notified pursuant to KRS 353.050; and*
  - (b) *Issue the permit to drill on the condition that a directional survey be performed pursuant to subsection (1) of Section 4 of this Act.*
- (4) *In order to perform the duties under this section, the Division of Oil and Gas Conservation shall create and adequately staff the positions required to perform the duties. The division may charge an administrative fee not to exceed fifty dollars (\$50) per permit application to perform its duties under this section.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 353 IS CREATED TO READ AS FOLLOWS:

*Nothing in Sections 2 to 8 of this Act shall be deemed an impairment or diminution of correlative rights or a modification of the well spacing requirements in KRS 353.610, except as specifically provided otherwise.*

➔Section 9. KRS 349.040 is amended to read as follows:

- (1) It is unlawful for any person to drill, commence, operate, deepen, convert, or stimulate any coalbed methane well, to conduct any horizontal drilling of a coalbed methane well or to convert any existing oil or natural gas well to a coalbed methane well, without first securing from the department a permit pursuant to this chapter. Before any well, borehole, or facility initially used for a coal mining related purpose, such as a vent hole, is converted for the purpose of recovering coalbed methane for sale or use, the operator shall obtain a permit and comply with the provisions of this chapter prior to the time that the well, borehole, or facility is converted or used for the purpose of recovering coalbed methane for sale or use. It is unlawful for any person to drill, deepen, convert, or reopen a coalbed methane well for the production of oil or natural gas or for the injection of water, gas, or other fluids into any oil or natural gas producing formation until the person has obtained a permit from the department for a petroleum or natural gas well pursuant to KRS 353.570. However, no additional permit fee shall be required if the original permit for the coalbed methane well has not expired.
- (2) Every permit application filed under this section shall be verified and shall contain the following:
  - (a) A statement that the applicant claims to have a valid real property interest in, or the current legal right to produce coalbed methane from a person claiming a valid real property interest in, the coalbed methane. The statement shall identify with specificity the nature of the real property interest and the document or instrument evidencing that interest or right, including recording information of any recorded document or instrument;
  - (b) The names and addresses of the coalbed methane well operator and every person or entity whom the applicant must notify under any section of this chapter;
  - (c) The name and address of each coal interest holder of any workable coalbed which is to be penetrated by a proposed coalbed methane well or within seven hundred fifty (750) horizontal feet or fifty (50) vertical feet of any portion of the proposed coalbed methane well;
  - (d) The name and addresses of each record oil and gas lessee of, the record oil and gas lessor of, and the operator of all oil and gas formations from the surface to one hundred (100) feet below the deepest penetration of the coalbed methane well on the tract upon which the coalbed methane well is proposed to be located;
  - (e) The coalbed methane well name or such other identification as the department may require;
  - (f) The approximate depth to which the coalbed methane well is to be drilled, deepened, or converted, the coal seams including the depth and thickness of each seam that will be completed for production, and any other coal seams which will be penetrated by the coalbed methane well;
  - (g) A description of any means to be used to stimulate any of the workable coalbeds penetrated by the coalbed methane well;
  - (h) If the proposed coalbed methane well will require casing or tubing, the entire casing program for the coalbed methane well, including the size of each string of pipe, the starting point and depth to which each string is to be set, and the extent to which each string is to be cemented;
  - (i) If the proposed operation is to convert an existing petroleum or natural gas well, as defined in KRS 353.010(19)~~(13)~~, or to convert a vertical borehole or facility initially used for a coal mining related purpose, such as a vent hole, to a coalbed methane well, all information required by this section, all formations from which production is anticipated, and any plans to plug any portion of the well;
  - (j) Except for a vent hole proposed to be converted to a coalbed methane well, if the proposed coalbed methane well will be completed in some but not all coal seams for production, a plan and design for the coalbed methane well which will protect all workable coalbeds which will be penetrated by the coalbed methane well;

- (k) If the proposed operations will include horizontal drilling of a coalbed methane well, a description of the operations, including both the vertical and horizontal alignment and extent of the coalbed methane well from the surface to total depth; and
  - (l) Other information as the department may require consistent with this chapter.
- (3) Each application for a coalbed methane well permit shall be accompanied by the following:
- (a) A permit application fee of three hundred dollars (\$300);
  - (b) A bond in an amount prescribed in KRS 349.120;
  - (c) A certificate that the applicant's notice requirements of KRS 349.015 have been satisfied. Certification may be by affidavit of personal service, or the return receipt card, or other postal receipt, for certified mailing;
  - (d) If the proposed coalbed methane well will be located within one-half (1/2) of a mile, measuring horizontally, of a water supply well being used for residential or domestic purposes, the applicant will submit the groundwater protection plan required under KRS 224.70-110 and applicable administrative regulations promulgated pursuant thereto for review by the department, or demonstrate to the department that a plan is not required; and
  - (e) Proof that the applicant has public liability insurance coverage in an amount not less than five hundred thousand dollars (\$500,000) in aggregate and three hundred thousand dollars (\$300,000) per occurrence for damages to persons and property caused by the applicant's operations or proof that the applicant has satisfied self-insurance requirements as provided by administrative regulations which shall be promulgated by the department.
- (4) Prior to the department's issuance of a permit to drill a coalbed methane well, a copy of the written authorization from the mine licensee shall be filed with the application under the following circumstances:
- (a) If the proposed coalbed methane well is to penetrate a workable coalbed that is within the permitted area of an existing permit or the proposed permitted area of a permit pending before the division and if the applicant plans to stimulate, complete, or horizontally drill the coalbed methane well in a workable coalbed that is within the permitted area of an existing permit or the proposed permitted area of a permit pending before the division;
  - (b) If the proposed coalbed methane well is to be located within a surface area permitted under an existing permit, or the proposed permitted area of a permit pending before the division for which no bond release has been obtained; or
  - (c) If the proposed coalbed methane well is to be located within a surface area permitted under an existing permit by the division for which a partial bond release has been obtained.
- If a coalbed methane well permit is issued for a well site located within the boundaries of any coal mine for which a permit has been issued or is pending pursuant to KRS Chapter 350, the permit shall include a provision specifically stating that the permitted coalbed methane well location is in an area for which a coal mine permit has been issued or is pending pursuant to KRS Chapter 350 and is subject to the mine-through rights set forth in KRS 349.030(1).
- (5) If a partial bond release for the surface area on which the proposed coalbed methane well is located has been obtained from the division and the applicant is denied written authorization from the mine licensee, the applicant may file an appeal with the review board requesting approval to drill the proposed coalbed methane well. When requesting an appeal, the applicant shall submit a verified statement including the following:
- (a) The applicant has met and conferred with or offered to meet and confer with the mine licensee concerning the authorization;
  - (b) The mine licensee has refused to provide written authorization to disturb the permitted area;
  - (c) The physical area to be disturbed by the proposed well location and the use of area, including ingress and egress thereto, qualifies as a commercial or industrial postmining land use entitling the mine licensee to a complete bond release for the area to be disturbed by the coalbed methane well operator in accordance with KRS Chapter 350; and

- (d) The applicant has agreed to pay the reasonable and actual costs of the permit revision required by the division to affect the incremental bond release for the proposed area to be disturbed by the coalbed methane well operator, not to exceed five thousand dollars (\$5,000).
- (6) Prior to the issuance of a permit to drill a coalbed methane well, the applicant shall grant assignable subsidence waivers to any mine licensee if requested in an objection filed pursuant to KRS 349.060 and, if required, to allow present or future mining with planned subsidence under KRS Chapter 350. However, this subsection and any subsidence waivers shall in no way waive, affect, or impair the ability of the applicant or the applicant's successors or assigns to pursue any remedies for damages to persons, or to improved or tangible property, suffered or incurred as a result of any subsidence caused by the mine licensee or the mine licensee's successors or assigns. The mine licensee, its successors or assigns, shall be liable for any and all damages to persons or to improved or tangible property proximately caused by the mine licensee.
- (7) If the mine licensee is mining in a coal seam that is not being produced by the coalbed methane well operator and has not exercised his or her mine-through rights, as set forth in KRS 349.030(1) or (2), in any coal mine before removing any coal or other material or driving any entry or passageway within five hundred (500) horizontal feet of the vertical segment of a coalbed methane well or within fifty (50) vertical feet of the horizontal segment of a coalbed methane well, the mine licensee shall forward simultaneously to the well operator and to the department, by certified mail, return receipt requested, or by registered mail, a copy of the maps and plans required by law to be filed and kept up to date. Maps or plans shall show the mine workings and projected mine workings within five hundred (500) horizontal feet of the coalbed methane well. However, the issuance of any coalbed methane well permit shall not preclude or prevent coal mining outside two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of a coalbed methane well or outside of the workable coalbed in which the horizontal segment of a coalbed methane well is located, unless specified by the department for reasons of mine or well safety. The mine licensee shall not mine within fifty (50) feet of the vertical segment of a coalbed methane well without the written authorization of the coalbed methane well operator. A mine licensee may file a request with the department to mine closer than two hundred (200) feet of the vertical segment of the coalbed methane well. The mine licensee shall forward simultaneously to the well operator and the department, by certified mail, return receipt requested, or by registered mail, a request to mine closer than two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well, which shall be accompanied by the following:
- (a) A copy of the maps and plans required by law to be filed and kept up to date, showing on the copy of the map or plan its mine plan workings and projected mine workings beneath the tract of land and within two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well; and
- (b) A statement that the applicant has met and conferred with, or offered to meet and confer with, the well operator concerning the mine licensee's plan to mine closer than two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well.

The well operator may, within twenty (20) days of receipt of the documents listed in paragraphs (a) and (b) of this subsection, file specific objections in writing with the department. When objections are filed, the department shall provide a copy of the objections to the mine licensee and fix a time and place for an informal hearing. The hearing shall be held not more than ten (10) days from the end of the twenty (20) day period. At the hearing, the mine licensee and the well operator, in person or by representative, shall consider the objections and seek agreement on the character and the extent of operations to be conducted within less than two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well. If no agreement can be reached, the department, after administrative hearing conducted in accordance with KRS Chapter 13B, shall make a decision defining what coal, if any, is necessary to be left for the safe protection, use, and operation of the well. The department's decision shall be subject to appeal by either party as provided in this chapter. The department shall keep a complete record of all hearings. The mine licensee shall, every six (6) months, while mining within two hundred (200) feet, but not closer than fifty (50) feet, of the vertical segment of the coalbed methane well, file up-to-date maps and plans required by this section, or file new maps and plans complete to date.

- (8) The department may deny the issuance of a permit if it determines that the applicant has a documented pattern or practice of substantial violations of the provisions of this chapter and has failed to abate or seek review of the violations. If the department finds that a substantial violation has occurred with respect to existing operations and that the operator has failed to abate or seek review of the violation in the time prescribed, the

department may suspend the permit. After a suspension, the operator shall forthwith cease all work being conducted under the permit until the department reinstates the permit. The department shall make a written finding of its determination and may enforce the determination in Circuit Court pursuant to KRS 349.145.

➔Section 10. KRS 350.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface impacts incident to an underground coal mine. The activities shall include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, extended depth secondary recovery systems, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching, or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the mine site. Excavation for the purpose of obtaining coal includes extraction of coal from refuse piles. The activities shall not include the extraction of coal by a landowner of fifty (50) tons or less within twelve (12) successive calendar months for his own noncommercial use from land owned or leased by him; the extraction of twenty-five (25) to two hundred fifty (250) tons of coal as an incidental part of privately financed construction where the coal is donated to a charitable or educational organization for noncommercial use or noncommercial distribution; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under administrative regulations established by the cabinet; the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for purposes of commercial use or sale; or coal exploration subject to KRS 350.057. Surface coal mining operations shall also include the areas upon which the activities occur or where the activities disturb the natural land surface. The areas shall also include any adjacent land, the use of which is incidental to the activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface resulting from or incident to the activities. This definition shall include the terms "strip mining" of coal and the "surface effects of underground mining" of coal as used in this chapter;
- (2) "Strip mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include the extraction of coal by a landowner for his own noncommercial use of fifty (50) tons or less within twelve (12) successive calendar months from land owned or leased by him; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under administrative regulations established by the cabinet; the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for purposes of commercial use or sale; coal exploration subject to KRS 350.057; nor shall it include the surface effects or surface impacts of underground coal mining;
- (3) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of the operations as required by this chapter;
- (4) "Overburden" means material of any nature, consolidated or unconsolidated, excluding topsoil, which lies above a natural deposit of coal and also means the material after removal from its natural state in the process of surface coal mining;
- (5) "Area of land affected" means any area of land or water upon which surface coal mining and reclamation operations are conducted or located or are to be conducted or located;
- (6) "Operations" means surface coal mining operations, all of the premises, facilities, roads, and equipment used in the process of producing coal from a designated area or removing overburden for the purpose of determining

the location, quality, or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or the removal of coal;

- (7) "Method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the coal;
- (8) "Operator" means any person, partnership, or corporation engaged in surface coal mining operations who removes or intends to remove more than twenty-five (25) tons of coal from the earth by coal mining within twelve (12) consecutive calendar months in any one (1) location;
- (9) "Person" means any individual, partnership, corporation, association, society, joint stock company, firm, company, or other business organization and shall also include any agency, unit, or instrumentality of federal, state, or local government including any publicly-owned utility or publicly-owned corporation of federal, state, or local government;
- (10) "Cabinet" means the Environmental and Public Protection Cabinet;
- (11) "Secretary" means the secretary of the Environmental and Public Protection Cabinet;
- (12) "Reclamation" means the reconditioning of the area affected by surface coal mining operations under a plan approved by the cabinet;
- (13) "Degree" when used in this chapter shall mean from the horizontal, and in each case shall be subject to a tolerance of five percent (5%) of error;
- (14) "Bench" means the ledge, shelf, or terrace formed in the contour method of strip mining;
- (15) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the cabinet determines that they are in compliance with KRS 350.455;
- (16) "Certification" by a qualified registered professional engineer, as required by this chapter and administrative regulations promulgated hereunder, means a good faith representation to the best of his or her knowledge and belief, based on adequate knowledge of the requirements of this chapter and administrative regulations promulgated hereunder, related experience, best professional judgment, accepted engineering practices and recognized professional standards, and standard practice as it relates to direct participation by the registered professional engineer or supervision of the registered professional engineer's employees or subordinates. Certification shall not be construed to constitute a warranty or guarantee;{+}
- (17) "Reclamation development fund" means only that reconditioning of land affected by surface mining, which will directly promote and benefit the fund administered by the Kentucky Economic Development Finance Authority to foster economic development on surface mining land;{+}
- (18) "Reclamation development project" means only that reconditioning of land affected by surface mining, which will directly promote and benefit an economic undertaking which constitutes a project under KRS 154.01-010(20);{+}
- (19) "Reclamation development plan" means a plan submitted to the cabinet to show compliance with reclamation standards, and submitted to the Kentucky Economic Development Finance Authority to seek moneys from the reclamation development fund for a reclamation development project;{+}
- (20) "Permit applicant" or "applicant" means a person applying for a permit;{+}
- (21) "Permittee" means a person holding a permit to conduct surface coal mining and reclamation operations;{+}
- (22) "Unanticipated event or condition" as used in KRS 350.085(7) means an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit;{+}
- (23) "Lands eligible for remining" means those lands that would otherwise be eligible for expenditures under KRS 350.560(1) or (2);{+}

- (24) "Coal combustion by-products" means fly ash, bottom ash, scrubber sludge, and waste from fluidized bed combustion, produced by the combustion of coal. Coal combustion by-products do not include boiler slag, or residues of refuse derived fuels, such as municipal solid waste, tires, and solvents;{+}
- (25) *"NAD 83" means the North American Datum, 1983 version, in feet units; and*
- (26) *"Single Zone Projection" means the Kentucky Single Zone State Plane Coordinate System of 1983, based on the Lambert Conformal map projection with double standard parallels on the North American Datum, as established in 10 KAR 5:010.*

➔Section 11. KRS 350.060 is amended to read as follows:

- (1) (a) No person shall engage in surface coal mining and reclamation operations without having first obtained from the cabinet a permit designating the area of land affected by the operation. Permits shall authorize the permittee to engage in surface coal mining and reclamation operations upon the area of land described in his application for a period not to exceed five (5) years. However, if an applicant demonstrates that a specified longer term is reasonably needed to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for the specified longer term, the cabinet may grant a permit for the longer term. No mining shall be permitted beyond the time period obligations of the initial or extended bond coverage.
- (b) Subject to the provisions of KRS 350.010(1) and (2), no person shall knowingly and willfully receive, transport, sell, convey, transfer, trade, exchange, donate, purchase, deliver, or in any way derive benefit from coal removed from any surface mining operation which does not have a permit as required under this section.
- (2) No permit or revision application shall be approved unless the application affirmatively demonstrates, and the cabinet finds in writing on the basis of the information set forth in the application or from information otherwise available, that the permit application is accurate and complete and that all the requirements of this chapter have been complied with.
- (3) A person desiring a permit to engage in surface coal mining operations shall file an application which shall state:
- (a) The location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;
- (b) The owner or owners of the surface of the area of land to be affected by the permit and the owner or owners of all surface area adjacent to any part of the affected area;
- (c) The owner or owners of the coal to be mined;
- (d) The source of the applicant's legal right to mine the coal on the land affected by the permit;
- (e) The permanent and temporary post office addresses of the applicant, which shall be updated immediately if changed at any point prior to final bond release;
- (f) Whether the applicant or any person, partnership, or corporation associated with the applicant holds or has held any other permits under this chapter, and an identification of the permits;
- (g) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the applicant, together with the names and addresses of any individual owning of record ten percent (10%) or more of any class of voting stock of the applicant, and whether the applicant or any person is subject to any of the provisions of subsection (3) of KRS 350.130 and he shall so certify. The permittee shall submit updates of this information as changes occur or as otherwise provided by administrative regulation; however, failure to submit updated information shall constitute a violation of this chapter only upon the permittee's refusal or failure to timely submit the information to the cabinet upon request. Upon receipt of updated information satisfactory to the cabinet, the cabinet shall promptly update its computer system containing the information;
- (h) A listing of any violations of this chapter, Public Law 95-87, and any law, rule, or regulation in effect for the protection of air or water resources incurred by the applicant in connection with any surface coal mining and reclamation operation during the three (3) year period prior to the date of an application. The list shall indicate the final resolution of the violations; and

- (i) Whether the area of land to be affected by the operation has been previously mined and is in compliance with current reclamation standards, and, if not, identify the needed reclamation work.
- (4) The application for a permit shall be accompanied by an official document, and an affidavit attesting to the document's authenticity, which will evidence what particular business entity the applicant is, whether a foreign or domestic corporation, a partnership, an entity doing business as another, or, if sole proprietorship, an affidavit so stating.
- (5) The application for a permit shall be accompanied by copies, in numbers satisfactory to the cabinet, of a United States Geological Survey topographic map or other map acceptable to the cabinet on which the applicant has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which the drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map.
- (6) The application for a permit shall be accompanied by copies, in numbers satisfactory to the cabinet, of an enlarged United States Geological Survey topographic map or other map acceptable to the cabinet meeting the requirements of paragraphs (a) to (i) of this subsection. The map shall:
  - (a) Be prepared and certified by a professional engineer registered under the provisions of KRS Chapter 322. The certification shall be in the form as provided in subsection (8) of this section, except that the engineer shall not be required to certify the true ownership of property under paragraph (d) of this subsection;
  - (b) Identify the area to correspond with the application;
  - (c) Show adjacent deep mining;
  - (d) Show the boundaries of surface properties and names of owners of the affected area and adjacent to any part of the affected area;
  - (e) Be of a scale of 1:24,000 or larger;
  - (f) Show the names and locations of all streams, creeks, or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected ***within three hundred (300) feet of an as-drilled oil or gas well, but as-drilled locations of oil and gas wells shall be certified only by a licensed surveyor and the well locations shall be entered in coordinates in feet units, using NAD 83, Single Zone Projection, as those terms are defined in Section 10 of this Act***~~and within five hundred (500) feet of the area~~;
  - (g) Show by appropriate markings the boundaries of the area of land affected, the cropline of the seam or deposit of coal to be mined, and the total number of acres involved in the area of land affected;
  - (h) Show the date on which the map was prepared, the north point, and the quadrangle name; and
  - (i) Show the drainage plan on and away from the area of land affected. The plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.
- (7) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions, and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the cabinet of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. This determination shall not be required until the time hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit shall not be approved until the information is available and is incorporated into the application.
- (8) All certifications required by this chapter to be made by professional engineers shall be done in the form prescribed by the cabinet and shall be reasonably specific as to the work being certified. The cabinet may reject any document or map as incomplete if it is not properly certified.
- (9) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation; the manner, time, and distance for backfilling;

grading work; and a reclamation plan for the affected area, which proposals shall meet the requirements of this chapter and administrative regulations adopted pursuant thereto.

- (10) The application for a permit shall be accompanied by proof that the applicant has public liability insurance coverage satisfactory to the cabinet for the surface mining and reclamation operations for which the permit is sought, or proof that the applicant has satisfied self-insurance requirements as provided by administrative regulations of the cabinet. The coverage shall be maintained in full force and effect during the terms of the permit and any permit renewal, and until reclamation operations are completed.
- (11) A basic fee set by administrative regulation, and bearing a reasonable relationship to the cost of processing the permit application but not to exceed three hundred seventy-five dollars (\$375), plus a fee set by administrative regulation but not to exceed seventy-five dollars (\$75), for each acre or fraction thereof of the area of land to be affected by the operation, shall be paid before the permit required in this section shall be issued; provided that if the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid in increments and at times corresponding to the approved plan. The applicant shall file with the cabinet a bond payable to the Commonwealth of Kentucky with surety satisfactory to the cabinet in the sum to be determined by the cabinet for each acre or fraction thereof of the area of land affected, with a minimum bond of ten thousand dollars (\$10,000), conditioned upon the faithful performance of the requirements set forth in this chapter and of the administrative regulations of the cabinet. The cabinet shall forfeit the entire amount of the bond for the permit area or increment in the event of forfeiture. In determining the amount of the bond, the cabinet shall take into consideration the character and nature of the overburden; the future suitable use of the land involved; the cost of backfilling, grading, and reclamation to be required; and the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential. The bond amount shall initially be computed to be sufficient to assure completion of reclamation if the work had to be performed by the cabinet in the event of forfeiture. The cabinet shall promulgate administrative regulations setting forth bonding requirements including, but not limited to, requirements for the amount, duration, release, and forfeiture of bonds.
- (12) The cabinet shall promulgate administrative regulations for the permitting of operations with surface effects of underground mining and other surface coal mining and reclamation operations consistent with this section. The cabinet shall recognize the distinct differences between the surface effects of underground mining and strip mining, as also provided in KRS 350.151, in promulgating permitting requirements for these operations; provided, that the cabinet shall require that all the areas overlying underground workings be permitted but that the areas overlying underground workings not affected by operations and facilities occurring on the surface shall not be subject to the payment of acreage fees or bond requirements of subsection (11) of this section, KRS 350.070, or KRS 350.151.
- (13) Any valid permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. An applicant for renewal of a permit shall pay a basic fee set by regulation, not to exceed three hundred seventy-five dollars (\$375). The holders of the permit may apply for renewal and the renewal shall be issued, provided that on application for renewal the burden shall be on the opponents of renewal, subsequent to the fulfillment of the public notice requirements of this chapter, unless it is established and written findings by the cabinet are made that:
  - (a) The terms and conditions of the existing permit are not being satisfactorily met;
  - (b) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter;
  - (c) The renewal requested substantially jeopardizes the applicant's continuing responsibility on existing permit areas;
  - (d) The applicant has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application as well as any additional bond the cabinet might require; or
  - (e) Any additional revised or updated information required by the cabinet has not been provided.

Prior to the approval of any renewal of permit, the cabinet shall provide notice to the appropriate public authorities.

- (14) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which

addresses any new areas of surface disturbance shall be subject to the full standards applicable to new applications under this chapter.

- (15) Any permit renewal shall be for a term not to exceed the period of the original permit. Application for permit renewal shall be made at least one hundred twenty (120) days prior to the expiration of the valid permit.
- (16) Notwithstanding any of the provisions of this section, a permit shall terminate if the permittee has not commenced the surface coal mining operations covered by the permit within three (3) years of the issuance of the permit. However, the cabinet may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding commencement of operations, or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time the construction of the synthetic fuel or generating facility is initiated.
- (17) Each application for a permit or revision for auger mining on a previously mined area shall contain information to describe the area to be affected, to show that the proposed method of operation will result in stable post-mining conditions, and reduce or eliminate adverse environmental conditions created by previous mining activities. If the cabinet determines that the affected area cannot be stabilized and reclaimed subsequent to augering or that the operation will result in an adverse impact to the proposed or adjacent area, the permit or revision shall not be issued. The cabinet shall, consistent with all applicable requirements of this chapter, issue a permit or revision if the applicant demonstrates that the proposed coal mining operations will provide for reduction or elimination of the highwall, or reduction or abatement of adverse impacts resulting from past mining activities, or stabilization or enhancement of a previously mined area. The cabinet shall insure that all reasonably available spoil material will be used to backfill the highwall to the extent practical and feasible; provided, however, that in all cases the holes be properly sealed and backfilled to a minimum of four (4) feet above the coal seam being mined.
- (18) All operations involving the loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site, shall be exempt from the requirements of this chapter.

➔Section 12. KRS 352.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
  - (a) "Abandoned workings" means excavations, either caved or sealed, that are deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly;
  - (b) "Active workings" means all places in a mine that are ventilated and inspected regularly;
  - (c) "Approved" means that a device, apparatus, equipment, machinery, or practice employed in the mining of coal has been approved by the commissioner of the Department for Natural Resources;
  - (d) "Assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein;
  - (e) "Board" means the Mining Board created in KRS 351.105;
  - (f) "Commercial mine" means any coal mine from which coal is mined for sale, commercial use, or exchange. This term shall in no instance be construed to include a mine where coal is produced for own use;
  - (g) "Commissioner" means commissioner of the Department for Natural Resources;
  - (h) "Department" means the Department for Natural Resources;
  - (i) "Drift" means an opening through strata or coal seams with opening grades sufficient to permit coal to be hauled therefrom, or which is used for the purpose of ventilation, drainage, ingress, egress, and other purposes in connection with the mining of coal;
  - (j) "Excavations and workings" means the excavated portions of a mine;
  - (k) "Executive director" means the executive director of the Office of Mine Safety and Licensing;
  - (l) "Face equipment" means mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated in by the last open crosscut in any entry or room;

- (m) "Fire boss" (often referred to as mine examiner) means a person certified as a mine foreman or assistant mine foreman who is designated by management to examine a mine or part of a mine for explosive gas or other dangers before a shift crew enters;
- (n) "Gassy mine." All underground mines shall be classified as gassy or gaseous;
- (o) "High voltage" means any voltage of one thousand (1,000) volts or more;
- (p) "Imminent danger" means the existence of any condition or practice which could reasonably be expected to cause death or serious physical injury before the condition or practice can be abated;
- (q) "Inactive workings" shall include all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned;
- (r) "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than nineteen and one-half percent (19.5%) of oxygen, no dangerous quantities of flammable gas, and no harmful amounts of poisonous gas or dust;
- (s) "Licensee" means any owner, operator, lessee, corporation, partnership, or other person who procures a license from the department to operate a coal mine;
- (t) "Low voltage" means up to and including six hundred sixty (660) volts;
- (u) "Medium voltage" means voltages greater than six hundred sixty (660) and up to nine hundred ninety-nine (999) volts;
- (v) "Mine" means any open pit or any underground workings from which coal is produced for sale, exchange, or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with the workings. Workings that are adjacent to each other and under the same management and which are administered as distinct units shall be considered separate mines;
- (w) "Mine foreman" means a certified person whom the licensee, mine manager, or superintendent places in charge of the workings of the mine and of persons employed therein;
- (x) "Mine manager" means a certified or noncertified person whom the licensee places in charge of a mine or mines and whose duties include but are not limited to operations at the mine or mines and supervision of personnel when qualified to do so;
- (y) ***"NAD 83" means the North American Datum, 1983 version in feet units;***
- (z) "Open-pit mine" shall include open excavations and open-cut workings including auger operations and highwall mining systems for the extraction of coal;
- ~~(aa)~~~~(z)~~ "Operator" means the licensee, owner, lessee, or other person who operates or controls a coal mine;
- ~~(ab)~~~~(aa)~~ "Permissible" means that any equipment, device, or explosive that has been approved by the United States Bureau of Mines, the Mining Enforcement and Safety Administration, or the Mine Safety and Health Administration meets all requirements, restrictions, exceptions, limitations, and conditions attached to the classification;
- ~~(ac)~~~~(ab)~~ "Preshift examination" refers to the examination of an underground mine or part of a mine where miners are scheduled to work or travel, and shall be conducted not more than three (3) hours before any oncoming shift;
- ~~(ad)~~~~(ae)~~ "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible, or pillared workings;
- ~~(ae)~~~~(ad)~~ "Serious physical injury" means an injury which has a reasonable potential to cause death;
- ~~(af)~~~~(ae)~~ "Shaft" means a vertical opening through the strata that is or may be used, in connection with the mining of coal, for the purpose of ventilation or drainage, or for hoisting men, coal, or materials;
- ~~(ag)~~ ***"Single Zone Projection" means the Kentucky Single Zone State Plane Coordinate System of 1983, based on the Lambert Conformal Conical map projection with double standard parallels on the North American Datum, 1983 version, as established in 10 KAR 5:010;***

- (ah)~~(af)~~ "Slope" means an inclined opening used for the same purpose as a shaft;
- (ai)~~(ag)~~ "Superintendent" means the person who, on behalf of the licensee, has immediate supervision of one (1) or more mines;
- (aj)~~(ah)~~ "Supervisory personnel" shall mean a person or persons certified under the provisions of KRS Chapter 351 to assist in the supervision of a portion or the whole of the mine or of the persons employed therein;
- (ak)~~(ai)~~ "Tipple or dumping point" means the structure where coal is dumped or unloaded from the mine car into railroad cars, trucks, wagons, or other means of conveyance;
- (al)~~(aj)~~ "Working face" means any place in a coal mine at which the extraction of coal from its natural deposit in the earth is performed during the mining cycle;
- (am)~~(ak)~~ "Working place" means the area of a coal mine in by the last open crosscut;
- (an)~~(al)~~ "Working section" means all areas of a coal mine from the loading point to and including the working faces; and
- (ao)~~(am)~~ "Workmanlike manner" means consistent with established practices and methods utilized in the coal industry.

- (2) The definitions in KRS 351.010 apply also to this chapter, unless the context requires otherwise.
- (3) Except as the context otherwise requires, this chapter applies only to commercial mines as defined in KRS 351.010 and shall not apply to electrical facilities owned, operated, or otherwise controlled by a retail electric supplier or generation and transmission cooperative as defined in KRS 278.010 or organized under KRS Chapter 279 for the purpose of communication, metering, or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, or outdoors by established easement rights on private property and that are covered by the National Electric Safety Code (NESCC) or other applicable safety codes, or other authorities having jurisdiction and shall not apply to installations under the exclusive control of utilities for the purpose of communication, metering, or for the generation, control, transformation, transmission, and distribution of electric energy located in buildings used exclusively by utilities for such purposes or located outdoors on property owned or leased by the utility or on public highways, streets, roads, or outdoors by established rights on private property.

➔Section 13. KRS 352.510 is amended to read as follows:

- (1) In any underground mine before removing any coal or other material or driving any entry or passageway within **three hundred (300)**~~five hundred (500)~~ feet of any *surveyed* natural gas or petroleum well, or before extending the workings in any mine beneath any tract of land on which these wells are also drilled, or within **three hundred (300)**~~five hundred (500)~~ feet of any of these wells or under any tract of land in visible possession of a well operator, the operator shall forward simultaneously to the well operator and to the Department for Natural Resources, by certified mail, return receipt requested, or by registered mail, a copy of the maps and plans required by law to be filed and kept up to date, showing on the copy of the map or plan its mine workings and projected mine workings beneath the tract of land and within **three hundred (300)**~~five hundred (500)~~ feet of its outer boundaries. The operator may then proceed with his mining operations in the manner indicated on the copy of the map or plan; but if the conduct of his mining operations nearer than **three hundred (300)**~~five hundred (500)~~ feet to any *surveyed natural gas or petroleum* well, whether completed or being drilled, or to any proposed well where a derrick is being constructed for drilling, or proposed well will endanger the use of drilling of the well, the well owner or operator affected may, within fifteen (15) days from the receipt of the copy of the map by him and the department, file specific objections in writing to the mining operations within less than **three hundred (300)**~~five hundred (500)~~ feet of the well; and if the objection is filed, the department shall notify the operator of the character of the objections and fix a time and place for an informal hearing not more than ten (10) days from the end of the fifteen (15) day period. At the hearing, the operator and the well operator, in person or by a representative, shall consider the objections and agree upon the character and extent of operations to be conducted within less than **three hundred (300)**~~five hundred (500)~~ feet of the well to satisfy the objections raised and meet the approval of the department. And, if no agreement can be reached, the department, after an administrative hearing conducted in accordance with KRS Chapter 13B, shall make a decision defining what coal, if any, is necessary to be left for the safe protection of

the use and operation of the well. The decision shall be subject to appeal by either party as provided in KRS 351.040. The department shall keep a complete record of all the hearings.

- (2) The mine operator shall, every six (6) months, while mining within **three hundred (300)**~~five hundred (500)~~ feet of the **surveyed natural gas and petroleum** well, bring up to date the maps and plans required by this section, or file new maps and plans complete to date.
- (3) **Prior to issuance of a waiver to mine within three hundred (300) feet of an oil or gas well, the Office of Mine Safety and Licensing shall determine whether the oil or gas operator has been properly notified as required by subsection (1) of this section.**

➔Section 14. KRS 353.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) **"Active mining area" means the area within two hundred (200) feet surrounding current mine works under development, inclusive of the area of five (5) year projections, as indicated on the annually filed mine license map.**
- (2) "Barrel" or "barrel of oil" means forty-two (42) standard United States liquid measure gallons of two hundred thirty-one (231) cubic inches per gallon, computed at a temperature of sixty (60) degrees Fahrenheit.
- ~~(3)~~~~(2)~~ "Casing" means a string or strings of pipe commonly placed in wells drilled for natural gas and petroleum.
- ~~(4)~~~~(3)~~ "Cement" means hydraulic cement properly mixed with water only.
- ~~(5)~~~~(4)~~ "Coal operator" means any person who proposes to or does operate a coal mine.
- ~~(6)~~~~(5)~~ "Cubic feet of gas" means the volume of gas contained in one (1) cubic foot of space at a standard pressure base of fourteen and seventy-three hundredths (14.73) pounds per square inch and a temperature base of sixty (60) degrees Fahrenheit.
- ~~(7)~~~~(6)~~ "Department" means the Department for Natural Resources.
- (8) **"Directional survey" means a survey performed while drilling using continuous measuring technology, a survey made through drilling tools, or other surveys at such intervals to accurately determine the location of the deviated wellbore.**
- ~~(9)~~~~(7)~~ "Gas" means natural gas.
- ~~(10)~~~~(8)~~ "Gas well" means any well which:
  - (a) Produces natural gas not associated or blended with crude petroleum oil any time during production; or
  - (b) Produces more than ten thousand (10,000) cubic feet of natural gas to each barrel of crude petroleum oil from the same producing horizon.
- (11) **"Inclination survey" means a survey performed to measure deviation from the true vertical, irrespective of direction, expressed in degrees.**
- (12) **"NAD 83" means the North American Datum, 1983 version using feet units.**
- ~~(13)~~~~(9)~~ "Oil" means petroleum.
- ~~(14)~~~~(10)~~ "Oil well" means any well which produces one (1) barrel or more of oil to each ten thousand (10,000) cubic feet of natural gas.
- ~~(15)~~~~(11)~~ "Plat" means a map, drawing, or print showing the location of a well.
- (16) **"Single Zone Projection" means the Kentucky Single Zone State Plane Coordinate System of 1983, based on Lambert Conformal Conic map projection with double standard parallels on the North American Datum, 1983 version, as established in 10 KAR 5:010.**
- (17) **"True vertical" means the orientation of the well at ninety degrees (90°) from the horizontal plane at the surface elevation.**
- ~~(18)~~~~(12)~~ "Unit" means any tract or tracts which the department has determined is underlaid by a pool or pools of oil and associated gas, and is not a "drilling unit" as defined in KRS 353.510(19).

- ~~(19)~~~~(13)~~ "Well" means a borehole drilled or proposed to be drilled for the purpose of producing natural gas or petroleum, or one through which natural gas or petroleum is being produced.
- ~~(20)~~~~(14)~~ "Well operator" means any person who proposes to or does locate, drill, operate, or abandon any well.
- ~~(21)~~~~(15)~~ "Workable bed" means:
- (a) A coal bed actually being operated commercially,
  - (b) A coal bed that the department decides can be operated commercially and the operation of which can reasonably be expected to commence within not more than ten (10) years, or
  - (c) Any coal bed that, from outcrop indication or other definite evidence, proves to the satisfaction of the department to be workable and, when operated, will require protection if wells are drilled through it.

**Signed by the Governor March 24, 2009.**

## CHAPTER 80

### (HB 472)

AN ACT relating to the regulation of horse racing in Kentucky.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 230.210 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Association" means any person licensed by the Kentucky Horse Racing Authority under KRS 230.300 and engaged in the conduct of a recognized horse race meeting;
- (2) "Authority" means the Kentucky Horse Racing Authority;
- (3) "Thoroughbred race or thoroughbred racing" means a form of horse racing in which each horse participating in the race is a thoroughbred, (i.e., meeting the requirements of and registered with The Jockey Club of New York) and is mounted by a jockey;
- (4) "Harness race" or "harness racing" means trotting and pacing races of the standardbred horses;
- (5) "Appaloosa race or Appaloosa racing" means that form of horse racing in which each horse participating in the race is registered with the Appaloosa Horse Club of Moscow, Idaho, and is mounted by a jockey;
- (6) "Horse race meeting" means horse racing run at an association licensed and regulated by the Kentucky Horse Racing Authority, and may include thoroughbred, harness, and quarter horse racing;
- (7) "Quarter horse" means a horse that is registered with the American Quarter Horse Association of Amarillo, Texas;
- (8) "Arabian" means a horse that is registered with the Arabian Horse Registry of Denver, Colorado;
- (9) "Track" means any association duly licensed by the Kentucky Horse Racing Authority to conduct horse racing. "Track" shall include any facility or real property that is owned, leased, or purchased by a track within the same geographic area within a sixty (60) mile radius of a track but not contiguous to track premises, upon authority approval, and provided the noncontiguous property is not within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track or simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area;
- (10) "Simulcast facility" means any facility approved pursuant to the provisions of KRS 230.380 to simulcast racing and conduct pari-mutuel wagering;
- (11) "Simulcasting" means the telecast of live audio and visual signals of horse races for the purpose of pari-mutuel wagering;
- (12) "Intertrack wagering" means pari-mutuel wagering on simulcast horse races from a host track by patrons at a receiving track;

- (13) "Interstate wagering" means pari-mutuel wagering on simulcast horse races from a track located in another state or foreign country by patrons at a receiving track or simulcast facility;
- (14) "Host track" means the track conducting racing and offering its racing for intertrack wagering, or, in the case of interstate wagering, means the Kentucky track conducting racing and offering simulcasts of races conducted in other states or foreign countries;
- (15) "Receiving track" means a track where simulcasts are displayed for wagering purposes. A track that submits an application for intertrack wagering shall meet all the regulatory criteria for granting an association license of the same breed as the host track, and shall have a heated and air-conditioned facility that meets all state and local life safety code requirements and seats a number of patrons at least equal to the average daily attendance for intertrack wagering on the requested breed in the county in which the track is located during the immediately preceding calendar year;
- (16) "Telephone account wagering" means a form of pari-mutuel wagering where an individual may deposit money in an account at a track and may place a wager by direct telephone call or by communication through other electronic media owned by the holder of the account to the track;
- (17) "Principal" means any of the following individuals associated with a partnership, trust, association, limited liability company, or corporation that is licensed to conduct a horse race meeting or an applicant for a license to conduct a horse race meeting:
- (a) The chairman and all members of the board of directors of a corporation;
  - (b) All partners of a partnership and all participating members of a limited liability company;
  - (c) All trustees and trust beneficiaries of an association;
  - (d) The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;
  - (e) All stockholders or other individuals who own, hold, or control, either directly or indirectly, **five percent (5%)**~~ten percent (10%)~~ or more of stock or financial interest in the collective organization; and
  - (f) Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation;~~and~~
- (18) "Kentucky Quarter Horse Purse Program" means a purse program established to receive funds from the authority for purse programs established in KRS 230.3771(4) to supplement purses for quarter horse races. The purse program shall be administered by the Kentucky Quarter Horse Racing Association;
- (19) ***"Advance deposit account wagering" means a form of pari-mutuel wagering in which an individual may establish an account with a person or entity licensed by the authority, and may place a pari-mutuel wager through that account that is permitted by law;***
- (20) ***"Advance deposit account wagering licensee" means a person or entity licensed by the authority to conduct advance deposit account wagering and accept deposits and wagers, issue a receipt or other confirmation to the account holder evidencing such deposits and wagers, and transfer credits and debits to and from accounts; and***
- (21) ***"Secondary pari-mutuel organization" or "SPMO" means an advance deposit account wagering licensee, a hub as defined in KRS 230.775, or any entity other than a licensed association or simulcast facility that offers and accepts pari-mutuel wagers. "SPMO" includes any off-track wagering system or advance deposit account wagering system, regardless of whether the off-track or advance deposit account wagering system is affiliated with a licensed association.***

➔Section 2. KRS 230.240 is amended to read as follows:

- (1) In addition to the employees referred to in KRS 230.230, the executive director of the authority may employ, dismiss, or take other personnel action and determine the reasonable compensation of stewards, supervisors of mutuels, veterinarians, inspectors, accountants, security officers, and other employees deemed by the executive director to be essential at or in connection with any horse race meeting and in the best interest of racing. ***Three (3) thoroughbred stewards shall be employed at each thoroughbred race meeting. Two (2) stewards shall be employed and compensated by the Commonwealth, subject to reimbursement by the racing associations pursuant to subsection (3) of this section. One (1) thoroughbred steward shall be employed and compensated by the racing association hosting the race meeting. Three (3) standardbred judges shall be***

*employed at each standardbred race meeting. Two (2) standardbred judges shall be employed and compensated by the Commonwealth, subject to reimbursement by the racing associations pursuant to subsection (3) of this section. One (1) standardbred judge shall be employed and compensated by the racing association hosting the race meeting.* The security officers shall be peace officers and conservators of the peace on authority property and at all race tracks and grounds in the Commonwealth and shall possess all the common law and statutory powers and privileges now available or hereafter made available to sheriffs, constables, and police officers for the purpose of enforcing all laws relating directly or indirectly to the conduct of horse racing and pari-mutuel wagering thereon, or the enforcement of laws relating to the protection of persons or property on premises licensed by the authority. The authority, for the purpose of maintaining integrity and honesty in racing, shall prescribe by administrative regulation the powers and duties of the persons employed under this section and qualifications necessary to competently perform their duties. In addition, the authority shall be responsible for seeing that racing officials employed under the provisions of this section have adequate training to perform their duties in a competent manner.

- (2) The authority shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. The authority may acquire, operate, and maintain, or contract for the maintenance and operation of, a testing laboratory and related facilities, for the purpose of saliva, urine, or other tests, and to purchase supplies and equipment for and in connection with the laboratory or testing processes. The expense of the laboratory or other testing processes, whether furnished by contract or otherwise, together with all supplies and equipment used in connection therewith, shall be paid by the various associations licensed under this chapter in the manner and in proportions as the authority shall by administrative regulation provide.
- (3) The compensation of the employees referred to in this section shall be paid by the licensee conducting the horse race meeting in connection with which the employees are utilized or employed. The salary of the executive director to the authority shall be prorated among and paid by the various associations licensed under this chapter in the manner as the authority shall, by administrative regulation, provide. ***Except for the thoroughbred steward and the standardbred judge authorized in subsection (1) of this section,*** the employees referred to in this section shall be deemed employees of the authority, and are paid by the licensee or association for convenience only.
- (4) Each person, as a condition precedent to the privilege of receiving a license under this chapter to conduct a horse race meeting, shall be deemed to have agreed to pay expenses and compensation as provided in this section and as may be actually and reasonably incurred.

➔Section 3. KRS 230.260 is amended to read as follows:

The authority, in the interest of breeding or the improvement of breeds of horses, shall have all powers necessary and proper to carry out fully and effectually the provisions of this chapter including, but without limitation, the following:

- (1) The authority is vested with jurisdiction and supervision over all horse race meetings in this Commonwealth and over all associations and all persons on association grounds and may eject or exclude therefrom or any part thereof, any person, licensed or unlicensed, whose conduct or reputation is such that his presence on association grounds may, in the opinion of the authority, reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of horse racing or racing at horse race meetings; provided, however, no persons shall be excluded or ejected from association grounds solely on the ground of race, color, creed, national origin, ancestry, or sex;
- (2) ***The authority is vested with jurisdiction over any SPMO that offers and accepts pari-mutuel wagers on races conducted at any racing association within the Commonwealth. An SPMO under the jurisdiction of the authority shall be licensed by the authority, and the authority may impose a license fee on an SPMO not to exceed ten thousand dollars (\$10,000) annually. The authority shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish conditions and procedures for the licensing of SPMOs, and a fee schedule for applications for licensure;***
- (3) ***The authority is vested with jurisdiction over any totalisator company that provides totalisator services to a racing association located in the Commonwealth. A totalisator company under the jurisdiction of the authority shall be licensed by the authority, regardless of whether a totalisator company is located in the Commonwealth or operates from a location or locations outside of the Commonwealth, and the authority may impose a license fee on a totalisator company. The authority shall, by administrative regulation***

*promulgated in accordance with KRS Chapter 13A, establish conditions and procedures for the licensing of totalisator companies, and a fee schedule for applications for licensure;*

- (4) *The authority is vested with jurisdiction over any manufacturer, wholesaler, distributor, or vendor of any equine drug, medication, therapeutic substance, or metabolic derivative which is purchased by or delivered to a licensee or other person participating in Kentucky horse racing by means of the Internet, mail delivery, in-person delivery, or other means;*
- (5) *The authority is vested with jurisdiction over any horse training center or facility in the Commonwealth that records official timed workouts for publication;*
- (6) *The authority may require an applicant for a license under subsections (2) and (3) of this section to submit to a background check of the applicant, or of any individual or organization associated with the applicant. An applicant shall be required to reimburse the authority for the cost of any background check conducted;*
- (7) The authority, its representatives and employees, may visit, investigate and have free access to the office, track, facilities, or other places of business of any licensee, *or any person owning a horse or performing services regulated by this chapter on a horse registered to participate in a breeders incentive fund under the jurisdiction of the authority* ~~for the purpose of satisfying itself that this chapter and its administrative regulations are strictly complied with~~;
- ~~(8)(3)~~ The authority shall have full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting;
- ~~(9)(4)~~ Applications for licenses shall be made in the form, in the manner, and contain information as the authority may, by administrative regulation, require. Fees for all licenses issued under KRS 230.310 shall be prescribed by and paid to the authority;
- ~~(10)(5)~~ The authority shall establish by administrative regulation minimum fees for jockeys to be effective in the absence of a contract between an employing owner or trainer and a jockey. The minimum fees shall be no less than those of July 1, 1985;
- (11) *The authority may refuse to issue or renew a license, revoke or suspend a license, impose probationary conditions on a license, issue a written reprimand or admonishment, impose fines or penalties, deny purse money, require the forfeiture of purse money, or any combination thereof with regard to a licensee or other person participating in Kentucky horse racing for violation of any federal or state statute, regulation, or steward's or authority's directive, ruling, or order to preserve the integrity of Kentucky horse racing or to protect the racing public. The authority shall, by administrative regulation, establish the criteria for taking the actions described in this subsection*~~(6) — Any of the foregoing administrative regulations, to the extent they are promulgated, shall be promulgated, amended, or repealed in conformity with KRS Chapter 13A~~;
- ~~(12)(7)~~ The authority may issue subpoenas for the attendance of witnesses before it and *for the production of documents, records, papers, books, supplies, devices, equipment, and all other instrumentalities related to pari-mutuel horse racing within the Commonwealth. The authority may administer oaths to witnesses and require witnesses to testify under oath* whenever, in the judgment of the authority, it is necessary to do so for the effectual discharge of its duties;
- ~~(13)(8)~~ The authority shall have authority to compel any racing association licensed under this chapter to file with the authority at the end of its fiscal year, a balance sheet, showing assets and liabilities, and an earnings statement, together with a list of its stockholders or other persons holding a beneficial interest in the association; *and*
- ~~(14)(9)~~ The authority shall promulgate administrative regulations establishing safety standards for jockeys, which shall include the use of rib protection equipment. Rib protection equipment shall not be included in a jockey's weight.

➔Section 4. KRS 230.265 is amended to read as follows:

- (1) There is hereby created a panel, to be known as the Kentucky Equine Drug Research Council, to advise the authority on the conduct of equine drug research and testing commissioned by the Kentucky Horse Racing Authority. The council shall consist of nine (9) members appointed by the Governor. It is recommended that the Governor appoint one (1) veterinarian from a list of three (3) submitted by the Kentucky Association of

Equine Veterinarians, one (1) horseman from a list of three (3) submitted by the Kentucky division of the Horsemen's Benevolent and Protective Association, one (1) pharmacologist from a list of three (3) submitted by the University of Kentucky, one (1) thoroughbred breeder from a list of three (3) submitted by the Kentucky Thoroughbred Owners and Breeders, Inc., one (1) legislator from a list of three (3) submitted by the Legislative Research Commission, one (1) representative of a licensed racing association chosen by the Governor, one (1) member of the harness racing industry from a list of three (3) submitted by the chairman of the Kentucky Horse Racing Authority, one (1) member from a list of three (3) submitted by the Kentucky Harness Horsemen's Association, and one (1) member of the Kentucky Horse Racing Authority, from a list of three (3) submitted by the chairman of the Kentucky Horse Racing Authority, to serve as chairman. The council shall meet at the call of the chairman, a majority of the council, or at the request of the authority. Members shall serve at the pleasure of their respective sponsoring organizations and shall receive no compensation for serving.

- (2) The Kentucky Equine Drug Research Council shall review equine drug research and testing research being conducted at the University of Kentucky or with state funds and shall review and report to the authority on drug research and testing research being conducted elsewhere. The council shall advise the authority and make recommendations for establishing an effective drug regulatory policy for Kentucky racing. In addition, the council shall report to the General Assembly any needed changes regarding the regulation of drugs in horse racing in the Commonwealth of Kentucky.
- (3) The authority shall receive one-tenth of one percent (0.1%) of the total amount wagered and subject to the pari-mutuel tax levied in KRS 138.510. This money shall be deducted from the pari-mutuel tax levied in KRS 138.510 and shall be used in *Kentucky for financing drug research, testing research, equine medical research, and equine health research issues, or any regulatory or administrative activity of the authority that is related to the research and issues described in this subsection. Any expenditure under this subsection shall relate to the racing industry in Kentucky. The money received under this subsection* ~~and testing research in Kentucky and~~ shall be in addition to any funds appropriated to the authority for these purposes in the executive budget.

➔Section 5. KRS 230.290 is amended to read as follows:

All licenses granted under this chapter:

- (1) Shall be in writing;
- (2) Shall be subject to all administrative regulations and conditions as may from time to time be prescribed by the authority;
- (3) Shall contain conditions as may be considered necessary or desirable by the authority for purposes of this chapter; and
- (4) No license shall extend beyond the end of the calendar year for which it was issued, ***unless the license expires on the last date of the birth month of the licensee, in which case it may expire on that date.*** ~~but~~ The authority may renew any license and any renewal shall not be construed to be a waiver or condonement of any violation which occurred prior to renewal and shall not prevent subsequent proceedings against the licensee therefor.

➔Section 6. KRS 230.300 is amended to read as follows:

- (1) Any person desiring to conduct horse racing at a horse race meeting within the Commonwealth of Kentucky or to engage in simulcasting and intertrack wagering as a receiving track during any calendar year shall first apply to the authority for a license to do so. The application shall be filed at the authority's general office on or before October 1 of the preceding year with respect to applications to conduct live horse race meetings, and with respect to intertrack wagering dates, and on forms prescribed by the authority. The application shall include the following information:
  - (a) The full name and address of the person making application;
  - (b) The location of the place, track, or enclosure where the applicant proposes to conduct horse racing meetings;
  - (c) The dates on which the applicant intends to conduct horse racing, which shall be successive days unless authorized by the authority;

- (d) The proposed hours of each racing day and the number of races to be conducted;
  - (e) The names and addresses of all principals associated with the applicant or licensee;
  - (f) The type of organizational structure under which the applicant operates, i.e., partnership, trust, association, limited liability company, or corporation, and the address of the principal place of business of the organization;
  - (g) Any criminal activities in any jurisdiction for which any individual listed under paragraphs (a) and (e) has been arrested or indicted and the disposition of the charges, and any current or on-going criminal investigation of which any of these individuals is the subject; and
  - (h) Any other information that the authority by administrative regulation deems relevant and necessary to determine the fitness of the applicant to receive a license, including fingerprints of any individual listed under paragraphs (a) and (e), if necessary for proper identification of the individual or a determination of suitability to be associated with a licensed racing association.
- (2) An application for license shall be accompanied by the following documents:
- (a) For a new license applicant, a financial statement prepared and attested to by a certified public accountant in accordance with generally accepted accounting principles, showing the following:
    - 1. The net worth of the applicant;
    - 2. Any debts or financial obligations owed by the applicant and the persons to whom owed; and
    - 3. The proposed or current financing structure for the operation and the sources of financing.
  - (b) For a license renewal applicant, an audited financial statement for the prior year;
  - (c) A copy of the applicant's federal and state tax return for the previous year. Tax returns submitted in accordance with this provision shall be treated as confidential;
  - (d) A statement from the Department of Revenue that there are no delinquent taxes or other financial obligations owed by the applicant to the state or any of its agencies or departments;
  - (e) A statement from the county treasurer of the county in which the applicant conducts or proposes to conduct horse racing meetings that there are no delinquent real or personal property taxes owed by the applicant.
- (3) The completed application shall be signed by the applicant or the chief executive officer if the applicant is an organization, sworn under oath that the information is true, accurate, and complete, and the application shall be notarized.
- (4) If there is any change in any information submitted in the application process, the applicant or licensee shall notify the authority within thirty (30) days of the change.
- (5) The authority shall as soon as practicable, but in no event later than November 1 in any calendar year, award dates for racing in the Commonwealth during the next year. In awarding dates, the authority shall consider and seek to preserve each track's usual and customary dates, as these dates are requested. If dates other than the usual and customary dates are requested, the applicant shall include a statement in its application setting forth the reasons the requested dates are sought. Dates for the conduct of intertrack wagering shall be awarded as provided in KRS 230.377. In the event scheduled racing is canceled by reason of flood, fire, inclement weather, or other natural disaster or emergency, the authority may award after November 1 additional racing dates to make up for those dates canceled.
- (6) The authority may issue a license to conduct a horse race meeting to any association making the aforesaid application if the applicant meets the requirements established in KRS 138.530 and other applicable provisions of this chapter, and if the authority finds that the proposed conduct of racing by the association would be in the best interest of the public health, safety, and welfare of the immediate community as well as to the Commonwealth.
- (7) As a condition precedent to the issuance of a license, the authority may require a surety bond or other surety conditioned upon the payment of all taxes due the Commonwealth, together with the payment of operating expenses including purses and awards to owners of horses participating in races.

- (8) *The authority may impose a fee and shall establish, by administrative regulation promulgated in accordance with KRS Chapter 13A, a fee schedule for association license applications.*
- (9) *The authority may require an applicant for an association license to submit to a background check of the applicant, or of any principal, individual, or organization associated with the applicant. The authority shall not require a background check for any individual who is a principal as defined in Section 1 of this Act but owns stock or financial interest in the applicant of less than ten percent (10%). An applicant shall be required to reimburse the authority for the cost of any background check conducted.*
- (10) Every license issued under this chapter shall specify among other things the name of the person to whom issued, the address and location of the track where the horse race meeting to which it relates is to be held or conducted, and the days and hours of the day when the meeting will be permitted; provided, however, that no track that is granted overlapping dates for the conduct of a live race meeting with another horse racing track within a fifty (50) mile radius shall be permitted to have a post time after 5:30 p.m., prevailing time for overlapping days between July 1 and September 15, unless agreed to in writing by the tracks affected.
- ~~(11)(9)~~ A license issued under this section is neither transferable nor assignable and shall not permit the conduct of a horse race meeting at any track not specified therein. However, if the track specified becomes unsuitable for racing because of flood, fire, or other catastrophe, the authority may, upon application, authorize the meeting, or any remaining portion thereof, to be conducted at any other suitable track available for that purpose, provided that the owner of the track willingly consents to the use thereof.
- ~~(12)(10)~~ Horse racing dates may be awarded and licenses issued authorizing horse racing on any day of the year. Horse racing shall be held or conducted only between sunrise and midnight.
- ~~(13)(11)~~ The authority may at any time require the removal of any official or employee of any association in those instances where it has reason to believe that the official or employee has been guilty of any dishonest practice in connection with horse racing or has failed to comply with any condition of his license or has violated any law or any administrative regulation of this authority.
- ~~(14)(12)~~ Every horse race not licensed under this section is hereby declared to be a public nuisance and the authority may obtain an injunction against the same in the Circuit Court of the county where the unlicensed race is proposed to take place.

➔Section 7. KRS 230.310 is amended to read as follows:

- (1) Every person not required to be licensed under KRS 230.300 who desires to participate in horse racing in the Commonwealth as a horse owner, trainer, jockey, apprentice jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, ***or in any other capacity as the authority shall from time to time establish by administrative regulation***, shall first apply to the authority for a license to participate in the activity on association grounds during a race meeting. No person required to be licensed by this section may participate in any activity required to be licensed on association grounds during a race meeting without a valid license therefor. An applicant for a license shall submit to the authority fingerprints as may be required and other information necessary and reasonable for processing a license application. The authority is authorized to exchange fingerprint data with the Department of Kentucky State Police and the Federal Bureau of Investigation in order to conduct a criminal history background check of an applicant. The authority may issue a license if it finds that the financial responsibility, age, experience, reputation, competence, and general fitness of the applicant to perform the activity permitted by a license are consistent with the best interest of racing and the maintenance of the honesty, integrity, and high quality thereof.
- (2) A license ~~may~~**shall** be issued for the calendar year ***for which an applicant applies or, if authorized by administrative regulation, a license may be issued that expires on the last day of the birth month of the licensee.*** A license ~~in which it is issued and~~ may be renewed by the authority. The license shall be valid at all horse race meetings in the Commonwealth during the period for which it is issued unless suspended or revoked under the administrative regulations promulgated by the authority under this chapter. With respect to horse owners and trainers, the authority may promulgate administrative regulations to facilitate and promote uniform, reciprocal licensing with other states.

➔Section 8. KRS 230.320 is amended to read as follows:

- (1) Every license granted under this chapter is subject to denial, revocation, or suspension, ***and every licensee or other person participating in Kentucky horse racing may be assessed an administrative fine and required to forfeit or return a purse***, by the authority in any case where it has reason to believe that any provision of this chapter, administrative regulation, or condition of the authority affecting it has not been complied with or has been broken or violated. ***The authority may deny, revoke, or suspend a license for failure by the licensee or other person participating in Kentucky horse racing to pay an administrative fine imposed upon the licensee by the stewards or the authority.*** The authority, in the interest of honesty and integrity of horse racing, may promulgate administrative regulations under which any license may be denied, suspended, or revoked, ***and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse.***
- (2) (a) ***Following a hearing by the stewards, a person who has been disciplined by a ruling of the stewards may apply to the authority for a stay of the ruling, pending action on an appeal by the authority.***
- (b) ***An application for a stay shall be received by the executive director or his designee within ten (10) calendar days of the issuance of the stewards' ruling.***
- (c) ***An application for a stay shall be in writing and include the following:***
1. ***The name, address, telephone number, and signature of the person requesting the stay;***
  2. ***A statement of the justification for the stay; and***
  3. ***The period of time for which the stay is requested.***
- (d) ***On a finding of good cause, the executive director or his designee may grant the stay. The executive director or his designee shall issue a written decision granting or denying the request for stay within five (5) calendar days from the time the application for stay is received by the executive director or his designee. If the executive director or his designee fails to timely issue a written decision, then the stay is deemed granted. The executive director or his designee may rescind a stay granted under this subsection for good cause.***
- (e) ***A person who is denied a stay by the executive director or his designee, or has a previously granted stay rescinded under paragraph (d) of this subsection, may petition the authority to overrule the executive director's or designee's denial or rescission of the stay. The petition shall be filed in writing with the chairperson of the authority and received by the chairperson within ten (10) calendar days of the mailing of the executive director's or designee's denial of the stay. The petition shall state the name, address, phone number, and signature of the petitioner; a statement of justification of the stay; and the time period for which the stay is requested. The chairperson shall convene a special meeting of the authority within ten (10) calendar days of receipt of the petition, and the authority shall issue a written final order granting or denying the petition within two (2) calendar days of the special meeting. If the authority fails to timely issue a final order on the petition, then the stay is granted. The authority may rescind a stay granted under this subsection for good cause.***
- (f) ***A person who is denied or has a previously granted stay rescinded by the authority may file an appeal of the final written order of the authority in the Circuit Court of the county in which the cause of action arose.***
- (g) ***The fact that a stay is granted is not a presumption that the ruling by the stewards is invalid.***~~Following an informal hearing by the stewards, any licensee alleged to have committed a violation under subsection (1) of this section may request a stay of imposition of the stewards' decision. Pending appeal, a hearing on the request for stay shall be held within forty eight (48) hours of the receipt of the request for a stay by the authority. If the authority is not able to hold a hearing within forty eight (48) hours, the stay shall be automatically granted. It shall be the policy of the authority to grant stays, unless:~~
- ~~(a) A licensee is alleged to have committed a flagrant violation of the duly promulgated administrative regulations of racing which presents a clear and present danger to the immediate integrity of racing; and~~
- ~~(b) It is impossible for the authority to secure necessary scientific evidence or indispensable witnesses within forty eight (48) hours;~~
- ~~then the authority or its designated hearing officer may refuse a request for the stay of any penalty imposed, as long as a hearing is held no later than thirty (30) days from the initial stewards' determination of a violation.]~~

- (3) If any license is denied, suspended, or revoked, *or if any licensee or other person participating in Kentucky horse racing is assessed an administrative fine or required to forfeit or return a purse*, after a ~~an informal~~ hearing by the stewards or by the authority acting on a complaint or by its own volition, the authority shall grant the applicant, ~~or~~ licensee, *or other person* the right to appeal the decision, and upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (4) *The authority may at any time order that any case pending before the stewards be immediately transferred to the authority for an administrative hearing conducted in accordance with KRS Chapter 13B.*
- (5) (a) *In an administrative appeal to the authority by a licensee or other person participating in Kentucky horse racing, the authority may determine in its final order that the appeal is frivolous. If the authority finds that an appeal is frivolous:*
1. *This fact shall be considered an aggravating circumstance and may be considered in assessing any penalty against the licensee; and*
  2. *The licensee or other person who raised the appeal may be required to reimburse the authority for the cost of the investigation of the underlying circumstances of the case and the cost of the adjudication of the appeal. Costs may include but are not limited to fees paid to a hearing officer or court reporter, attorneys fees, and laboratory expenses.*
- (b) *The authority shall by administrative regulation prescribe the conditions or factors by which an appeal may be determined to be frivolous.*
- (6) *Any administrative action authorized in this chapter shall be in addition to any criminal penalties provided in this chapter or under other provisions of law.*

➔Section 9. KRS 230.3615 is amended to read as follows:

- (1) The commission, including the tax levied in KRS 138.510, deducted from the gross amount wagered by the association which operates a race track under the jurisdiction of the Kentucky Horse Racing Authority and conducts the thoroughbred racing at which betting is conducted through a pari-mutuel or other similar system, in races where the patron is required to select one (1) horse, and the breaks, which breaks shall be made and calculated to the dime, shall not be more than sixteen percent (16%) at the discretion of those tracks averaging over one million two hundred thousand dollars (\$1,200,000) in on-track pari-mutuel handle per day of live racing conducted by the association. The commission at those tracks averaging one million two hundred thousand dollars (\$1,200,000) or less in on-track pari-mutuel handle per day of live racing conducted by the association, at the discretion of such track, shall not be more than seventeen and one-half percent (17.5%) in races where the patron is required to select one (1) horse, and the breaks, which breaks shall be made and calculated to the dime.
- (2) The commission at those tracks averaging over one million two hundred thousand dollars (\$1,200,000) in on track pari-mutuel handle per day of live racing conducted by the association, including the tax levied in KRS 138.510, deducted from the gross amount wagered by the person, corporation, or association which operates a race track under the jurisdiction of the Kentucky Horse Racing Authority and conducts thoroughbred racing at which betting is conducted through a pari-mutuel or other similar system shall not exceed nineteen percent (19%) of the gross handle in races where the patron is required to select two (2) or more horses, and the breaks, which breaks shall be made and calculated to the dime. The commission, at those tracks averaging one million two hundred thousand dollars (\$1,200,000) or less in on track pari-mutuel handle per day of live racing conducted by the association, including the tax levied in KRS 138.510, deducted from the gross amount wagered by the association which operates a race track under the jurisdiction of the Kentucky Horse Racing Authority and conducts thoroughbred racing at which betting is conducted through a pari-mutuel or other similar system shall not exceed twenty-two percent (22%) of the gross handle in races where the patron is required to select two (2) or more horses, and the breaks, which breaks shall be made and calculated to the dime.
- (3) The minimum wager to be accepted by any licensed association ~~shall~~~~may~~ be *ten cents (\$0.10)*~~one dollar (\$1)~~. The minimum pay-off on a one dollar (\$1) wager shall be one dollar and ten cents (\$1.10); but, in the event of a minus pool, the minimum pay-off for a one dollar (\$1) wager shall be one dollar and five cents (\$1.05).

- (4) Each association conducting thoroughbred racing and averaging one million two hundred thousand dollars (\$1,200,000) or less in on-track pari-mutuel handle per day of live racing conducted by the association shall pay to the authority all moneys allocated to the backside improvement fund in an amount equal to one-half of one percent (0.5%) of its on-track pari-mutuel wagers.

➔Section 10. KRS 230.990 is amended to read as follows:

- (1) Any person who violates KRS 230.070 or KRS 230.080(3) shall be guilty of a Class D felony.
- (2) Any person who violates KRS 230.090 shall be guilty of a Class A misdemeanor.
- (3) Any person who violates KRS 230.680 shall be guilty of a Class A misdemeanor.
- (4) Any person who refuses to make any report or to turn over sums as required by KRS 230.361 to 230.373 shall be guilty of a Class A misdemeanor.
- (5) Any person failing to appear before the authority at the time and place specified in the summons issued pursuant to KRS 230.260(~~13~~)(~~7~~), or refusing to testify, shall be guilty of a Class B misdemeanor. False swearing on the part of any witness shall be deemed perjury and punished as such.
- (6)
  - (a) A person is guilty of tampering with or interfering with a horse race when, with the intent to influence the outcome of a horse race, he uses any device, material, or substance not approved by the Kentucky Horse Racing Authority on or in any participant involved in or eligible to compete in a horse race to be viewed by the public.
  - (b) Any person who, while outside the Commonwealth and with intent to influence the outcome of a horse race contested within the Commonwealth, tampers with or interferes with any equine participant involved in or eligible to compete in a horse race in the Commonwealth is guilty of tampering with or interfering with a horse race.
  - (c) Tampering with or interfering with a horse race is a Class C felony.

➔Section 11. KRS 355.9-408 is amended to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:
  - (a) Would impair the creation, attachment, or perfection of a security interest; or
  - (b) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.
- (2) Subsection (1) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.
- (3) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:
  - (a) Would impair the creation, attachment, or perfection of a security interest; or
  - (b) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.
- (4) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (3) of this section would be effective under law other than this article but is ineffective under subsection (1) or (3) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

- (a) Is not enforceable against the person obligated on the promissory note or the account debtor;
  - (b) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;
  - (c) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;
  - (d) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;
  - (e) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and
  - (f) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.
- (5) This section prevails over any inconsistent provisions of the following statutes and any administrative regulations based on those statutes: KRS 56.230(2), 138.320(3), 138.665(4), 138.720(5), 139.250, 154A.400(3), 190.047(1), 190.070(2)(c), 217B.535(2), 228.070(2), 230.300(II)~~(9)~~, 234.330(10), 243.630(2), 260.815, 286.4-460(2), 292.320(2)(b), 286.8-036(3), 304.3-410(2)(f), 304.3-520(5), 333.080, 350.135(1), 365.430(27), and 286.9-070(2).
- (6) Subsection (3) of this section does not apply to the following statutes and to administrative regulations promulgated under the authority of those statutes: KRS 304.2-260, KRS 304.24-420, Subtitle 33 of KRS Chapter 304, and Subtitle 37 of KRS Chapter 304.

➔Section 12. KRS 230.777 is amended to read as follows:

- (1) Except as otherwise provided in KRS 230.775 to 230.785, the provisions of KRS 230.378, 230.379, and 230.380 shall apply to the establishment of authorized hub accounts for residents of the Commonwealth of Kentucky.
- (2) Accounts may be established for individuals outside of the Commonwealth of Kentucky, including foreign jurisdictions, if:
  - (a) Pari-mutuel wagering on horse racing is lawful in the jurisdiction of the account holder's principal residence; and
  - (b) The hub complies with the Interstate Horseracing Act, 15 U.S.C. secs. 3001 to 3007. The call center used in the operations of the hub shall not be located on state property. ~~[- No more than four (4) hubs shall be licensed in the Commonwealth at any one (1) time.]~~

**Signed by the Governor March 24, 2009.**

## CHAPTER 81

### (HB 485)

AN ACT relating to pesticides.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 217.570 is amended to read as follows:

- (1) (a) ***Except as provided by paragraph (b) of this subsection***, every pesticide distributed within the state or delivered for transportation or transported in intrastate commerce or between points within the state through points outside the state shall be registered with the department. ~~[- provided, that]~~
- (b) Registration is not required if:

1. A pesticide is shipped from one (1) plant or warehouse to another plant or warehouse operated by the same person and used solely at ~~the [such]~~ plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of KRS 217.542 to 217.630; or
  2. If the pesticide is distributed under the provisions of an experimental use permit issued under the provisions of KRS 217.542 to 217.630 or an experimental use permit issued by EPA.
- (c) All registrations shall expire on the thirty-first day of December of the calendar year for which they were issued.
- (2) The applicant for registration shall file with the department, a statement containing:
- (a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;
  - (b) The name of the pesticide and its EPA registration number;
  - (c) A complete copy of the labeling accompanying the pesticide and a statement of all claims made or to be made for it including directions for use and a request that the pesticide be classified for nonrestricted use, for restricted use, or for both as provided for in FIFRA. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered, **unless the department requests a copy of the labeling** ~~provided, that upon request a copy of all labels shall be furnished~~; **and**
  - (d) Other necessary information as specified by the department on the application for registration form. ~~;~~
- ~~(3)(e)~~ The department may require a full description of the tests made and results **of the tests** ~~thereof~~ upon which the claims are based on any pesticide not registered **in accordance with** ~~pursuant to~~ Section 3 of FIFRA, or on any pesticide on which restrictions are being considered.
- ~~(4)(3)~~ (a) The applicant desiring to register a pesticide in this state shall make application on forms furnished by the department, and, for the purposes identified in paragraph (b) of this subsection, shall pay to the department an annual fee of **two hundred fifty dollars (\$250)** ~~one hundred twenty five dollars (\$125)~~ for each and every brand or grade to be offered for sale in this state. There shall be issued to the registrant by the department a license entitling the registrant to sell all duly registered brands in this state until the expiration of the license. ~~;~~
- (b) The annual fees received by the department shall be used **to fund** ~~as follows~~:
1. ~~The [An amount not to exceed one hundred thousand dollars (\$100,000) annually for]~~ Kentucky Agriculture and Environment in the Classroom **program**, a program administered by the department; ~~;~~
  2. ~~The [An amount not to exceed two hundred thousand dollars (\$200,000) for a]~~ farm chemical and container disposal program, **a program** administered by the department; ~~;~~
  3. ~~The [An amount not to exceed five hundred fifty thousand dollars (\$550,000) for a]~~ cost-sharing program through the department and the Environmental and Public Protection Cabinet, Division of Conservation, for the use of farmers in implementing agricultural production practices that protect the quality of soil and water resources; **and** ~~;~~
  4. ~~[Any remaining funds shall be used in defraying]~~ Expenses incurred in the enforcement of KRS 217.542 to 217.630.
- ~~(5)(4)~~ The department, when necessary in the administration of KRS 217.542 to 247.630, may require the submission of the complete formula of any pesticide, including the active and inert ingredients. ~~;~~
- ~~(6)(5)~~ The department may refuse to register, or to cancel the registration of, any brand of pesticide ~~as herein provided,~~ upon satisfactory proof that the registrant has been guilty of fraudulent and deceptive practices in evasions or attempted evasions of the provisions of KRS 217.542 to 217.630 or any **administrative** ~~rules and~~ regulations promulgated **under KRS 217.542 to 217.630**. ~~thereunder; provided, that~~ No registration shall be revoked or refused until the registrant **has** ~~shall have~~ been given a hearing by the department. ~~;~~
- ~~(7)(6)~~ Registrants desiring to renew registrations shall file with the department an application for renewal prior to January 1. Any registration in effect on the thirty-first day of December and for which a renewal application

has been made and the proper fee paid shall continue in full force and effect until ~~[such time as]~~ the department has notified the applicant that the registration has been renewed, or denied.~~;~~

- ~~(8)~~~~(7)~~ If the renewal of a pesticide registration is not filed prior to January 15 of any year, or if a new product is sold or offered for sale prior to registration, an additional fee of ten dollars (\$10) shall be assessed and added to the original fee before the registration of that pesticide is renewed or a new registration is accepted. ~~The~~~~;~~ ~~provided, that such~~ additional fee shall not apply if the applicant furnishes an affidavit certifying that he did not distribute ~~any~~~~;~~ ~~such~~ unregistered pesticides during the period of nonregistration. The payment of ~~the~~~~;~~ ~~such~~ additional fee is not a bar to any prosecution for doing business without proper registry.~~;~~
- ~~(9)~~~~(8)~~ Upon certification by the administrator of EPA to register pesticides *in accordance with*~~;~~ ~~pursuant to~~ Section 24(c) of FIFRA, the department may register ~~the~~~~;~~ ~~such~~ pesticides if it determines that:
- (a) Its composition ~~warrants~~~~;~~ ~~is such as to warrant~~ the proposed claims for it;
  - (b) Its labeling and other material required to be submitted meet with the requirements of KRS 217.542 to 217.630;
  - (c) It will perform its intended function, and when used in accordance with widespread and commonly recognized practice, will not cause unreasonable adverse effects on the environment; and
  - (d) ~~Provided that~~ The registration is not disapproved by the administrator of EPA.

**Signed by the Governor March 24, 2009.**

## CHAPTER 82

### (HB 489)

AN ACT relating to child medical support.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 403.211 is amended to read as follows:

- (1) An action to establish or enforce child support may be initiated by the parent, custodian, or agency substantially contributing to the support of the child. The action may be brought in the county in which the child resides or where the defendant resides.
- (2) At the time of initial establishment of a child support order, whether temporary or permanent, or in any proceeding to modify a support order, the child support guidelines in KRS 403.212 shall serve as a rebuttable presumption for the establishment or modification of the amount of child support. Courts may deviate from the guidelines where their application would be unjust or inappropriate. Any deviation shall be accompanied by a written finding or specific finding on the record by the court, specifying the reason for the deviation.
- (3) A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption and allow for an appropriate adjustment of the guideline award if based upon one (1) or more of the following criteria:
  - (a) A child's extraordinary medical or dental needs;
  - (b) A child's extraordinary educational, job training, or special needs;
  - (c) Either parent's own extraordinary needs, such as medical expenses;
  - (d) The independent financial resources, if any, of the child or children;
  - (e) Combined monthly adjusted parental gross income in excess of the Kentucky child support guidelines;
  - (f) The parents of the child, having demonstrated knowledge of the amount of child support established by the Kentucky child support guidelines, have agreed to child support different from the guideline amount. However, no such agreement shall be the basis of any deviation if public assistance is being paid on behalf of a child under the provisions of Part D of Title IV of the Federal Social Security Act; and
  - (g) Any similar factor of an extraordinary nature specifically identified by the court which would make application of the guidelines inappropriate.

- (4) "Extraordinary" as used in this section shall be determined by the court in its discretion.
- (5) When a party has defaulted or the court is otherwise presented with insufficient evidence to determine gross income, the court shall order child support based upon the needs of the child or the previous standard of living of the child, whichever is greater. An order entered by default or due to insufficient evidence to determine gross income may be modified upward and arrearages awarded from the date of the original order if evidence of gross income is presented within two (2) years which would have established a higher amount of child support pursuant to the child support guidelines set forth in KRS 403.212.
- (6) The court shall allocate between the parents, in proportion to their combined monthly adjusted parental gross income, reasonable and necessary child care costs incurred due to employment, job search, or education leading to employment, in addition to the amount ordered under the child support guidelines.
- (7) (a) If *private* health care insurance coverage is reasonable *in cost* and *accessible to either parent*~~[available]~~ at the time the request for coverage is made, the court shall ***order the parent to obtain or maintain coverage and the court shall*** allocate between the parents, in proportion to their combined monthly adjusted parental gross income, the cost of health care insurance coverage for the child, in addition to the support ordered under the child support guidelines.
- (b) A parent, who has one hundred percent (100%) of the combined monthly adjusted parental gross income, shall be entitled to a reduction in gross income of the entire amount of premiums incurred and paid.
- (c) The court shall order the cost of health care of the child to be paid by either or both parents of the child regardless of who has physical custody. The court order shall include:
1. A judicial directive designating which parent shall have financial responsibility for providing health care for the dependent child, which shall include but not be limited to *private health care* insurance coverage, payments of necessary health care deductibles or copayments;~~and~~
  2. ***If appropriate, cash medical support. "Cash medical support" means an amount to be paid toward the cost of health care insurance coverage that is provided by a public entity, including the Kentucky Children's Health Insurance program or the Kentucky Medicaid program, or another parent or person with whom the child resides through employment or otherwise, fixed payments for ongoing medical costs, extraordinary medical expenses, or any combination thereof; and***
  3. A statement providing that if the designated parent's health care coverage provides for covered services for dependent children beyond the age of majority, then any unmarried children up to twenty-five (25) years of age who are full-time students enrolled in and attending an accredited educational institution and who are primarily dependent on the insured parent for maintenance and support shall be covered.
- (d) If *private* health care insurance coverage is not reasonable *in cost* and *accessible*~~[available]~~ at the time the request for the coverage is made, the court order shall provide for ***cash medical support until private*** health care insurance coverage~~[at the time it]~~ becomes reasonable *in cost* and *accessible*~~[available]~~.
- (8) (a) ***For purposes of this section, "reasonable in cost" means that the cost of coverage to the responsible parent does not exceed five percent (5%) of his or her gross income. The five percent (5%) standard shall apply to the cost of adding the child to an existing policy, the difference in the cost between a single and a family policy, or the cost of acquiring a separate policy to cover the child. If the parties agree or the court finds good cause exists, the court may order medical coverage in excess of five percent (5%) of the parent's gross income.***
- (b) ***For purposes of this section, "accessible" means that there are providers who meet the health care needs of the child and who are located no more than sixty (60) minutes or sixty (60) miles from the child's primary residence, except that nothing shall prohibit use of a provider located more than sixty (60) minutes or sixty (60) miles from the child's primary residence; and***
- (9) The cost of extraordinary medical expenses shall be allocated between the parties in proportion to their combined monthly adjusted parental gross incomes. "Extraordinary medical expenses" means uninsured expenses in excess of one hundred dollars (\$100) per child per calendar year. "Extraordinary medical expenses" includes but is not limited to the costs that are reasonably necessary for medical, surgical, dental,

orthodontal, optometric, nursing, and hospital services; for professional counseling or psychiatric therapy for diagnosed medical disorders; and for drugs and medical supplies, appliances, laboratory, diagnostic, and therapeutic services.

- (10)~~(9)~~ The court order shall include the Social Security numbers, provided in accordance with KRS 403.135, of all parties subject to a support order.
- (11)~~(10)~~ In any case administered by the Cabinet for Health and Family Services, if the parent ordered to provide health care coverage is enrolled through an insurer but fails to enroll the child under family coverage, the other parent or the Cabinet for Health and Family Services may, upon application, enroll the child.
- (12)~~(11)~~ In any case administered by the cabinet, information received or transmitted shall not be published or be open for public inspection, including reasonable evidence of domestic violence or child abuse if the disclosure of the information could be harmful to the custodial parent or the child of the parent. Necessary information and records may be furnished as specified by KRS 205.175.
- (13)~~(12)~~ In the case in which a *parent is obligated to provide*~~noncustodial parent provides~~ health care *insurance* coverage, and changes employment, and the new employer provides health care *insurance* coverage, the Cabinet for Health and Family Services shall transfer notice of the provision for coverage for the child to the employer, which shall operate to enroll this child in the *obligated*~~noncustodial~~ parent's health plan, unless the *obligated*~~noncustodial~~ parent contests the notice as specified by KRS Chapter 13B.
- (14)~~(13)~~ Notwithstanding any other provision of this section, any wage or income shall not be exempt from attachment or assignment for the payment of current child support or owed or to-be-owed child support.
- (15)~~(14)~~ A payment of money received by a child as a result of a parental disability shall be credited against the child support obligation of the parent. A payment shall not be counted as income to either parent when calculating a child support obligation. An amount received in excess of the child support obligation shall be credited against a child support arrearage owed by the parent that accrued subsequent to the date of the parental disability, but shall not be applied to an arrearage that accrued prior to the date of disability. The date of disability shall be as determined by the paying agency.

Signed by the Governor March 24, 2009.

## CHAPTER 83

### (SB 22)

AN ACT relating to personal services and making an appropriation therefor.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 3 of this Act:*

- (1) *"Cabinet" means the Cabinet for Health and Family Services;*
- (2) *"Client" means an individual who has been accepted to receive personal services from a personal services agency;*
- (3) *"Crime" means a conviction of or plea of guilty to a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult or child; or the commission of a sex crime. Conviction of or a plea of guilty to an offense committed outside the Commonwealth of Kentucky is a crime if the offense would have been a felony if committed in Kentucky;*
- (4) *"Department" means a department designated by the Cabinet for Health and Family Services;*
- (5) *"Designated representative" means a person who has legal authority or is designated by the client to act on behalf of the client with regard to the action to be taken;*
- (6) *"Direct service" means personal or group interaction between the employee and the client;*
- (7) (a) *"Personal services" means:*
  1. *Assisting with a client's ambulation and activities of daily living as defined in KRS 194A.700;*

2. *Facilitating the self-administration of medications if such medications are prepared or directed by a licensed health-care professional or the client's designated representative;*
  3. *Providing services which may be referred to as attendant care, in-home companion, sitter and respite care services, and homemaker services when provided in conjunction with other personal services; and*
  4. *Providing services that enable the client to live safely, comfortably, and independently.*
- (b) *"Personal services" excludes the following:*
1. *Housing and services provided by a health facility or service as defined in KRS 216B.015;*
  2. *Voluntary services provided by employers or membership organizations for their employees, members, and families of the employees or members if the services are not the predominant purpose of the employer or the membership organization's business;*
  3. *House cleaning, laundry, personal shopping, or transportation provided by an entity if the entity offers no other personal services;*
  4. *Services provided by the client's family or by individuals who provide services to no more than three (3) clients concurrently;*
  5. *Individuals or entities that provide all personal services on a voluntary basis;*
  6. *Services that require the order of a licensed health-care professional to be lawfully performed in Kentucky;*
  7. *Hospitals or other entities that provide information to consumers regarding persons who are available as caregivers if the hospital or other entity makes no attempt to manage or coordinate the selection of such persons for consumers and a disclaimer is provided that the entity providing the information has not made an independent assessment of the ability of the individual or agency to provide personal services;*
  8. *Free Internet resources that identify potential caregivers; and*
  9. *Any health-care entity or health-care practitioner otherwise licensed, certified, or regulated by local, state, or federal statutes or regulations;*
- (8) *"Personal services agency" means any person, business entity, corporation, or association, either for-profit or not-for-profit, that directly provides or makes provision for personal services through:*
- (a) *Its own employees or agents;*
  - (b) *Contractual arrangements with independent contractors; or*
  - (c) *Referral of persons to render personal services if the person making the referral has an ownership or financial interest that is realized from the delivery of those services.*
- (9) *"Parent personal services agency" means a personal services agency located in Kentucky that develops and maintains administrative and fiscal control over a branch office in a different Kentucky location, and does not include an out-of-state personal services agency with a branch office in Kentucky; and*
- (10) *"Secretary" means the secretary of the Cabinet for Health and Family Services.*
- ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:
- (1) *No personal services agency shall be operated, maintained, or advertised without obtaining a certificate as provided in this section. Entities that operate personal services agencies, as defined in Section 1 of this Act, in Kentucky on the effective date of this section shall have until December 31, 2009, to file an application for certification pursuant to this section. All other agencies shall be required to obtain certification prior to providing personal services. A parent personal services agency with one (1) or more branch offices in Kentucky shall not be required to obtain separate certificates for each of its branch offices.*
  - (2) *Each personal services agency providing direct services to clients as defined in Section 1 of this Act shall perform a criminal background check on any applicant for employment prior to employing the applicant. Each application provided by the personal services agency to the applicant for initial employment shall state in a conspicuous manner on the application "For This Type of Employment State Law Requires a Criminal Background Check as Condition of Employment."*

- (3) *No personal services agency shall employ a person in a position which involves providing direct services to a client if the employee has been convicted of a crime as defined by Section 1 of this Act.*
- (4) *The secretary shall promulgate administrative regulations to implement this section and Sections 3 and 4 of this Act. The administrative regulations at a minimum shall establish:*
  - (a) *An initial and annual certification review process for personal services agencies that does not require an on-site visit;*
  - (b) *Procedures related to applying for, reviewing, approving, denying, and revoking certification;*
  - (c) *Fees for application and reapplication in an amount sufficient to offset the cost to administer Sections 2 and 3 of this Act;*
  - (d) *Procedures for complaint investigations;*
  - (e) *Procedures for the imposition and collection of fines as provided by Section 3 of this Act;*
  - (f) *Policies and procedures for the personal services agencies;*
  - (g) *Procedures for criminal background checks;*
  - (h) *Procedures to ensure the competency of the individuals providing personal services, the requirements of written service agreements between the personal services agencies and clients or designated representatives, and the requirements of personal service plans for the clients; and*
  - (i) *Procedures to be utilized in the conduct of hearings upon appeals in accordance with KRS Chapter 13B.*
- (5) *Only those personal services agencies meeting the standards prescribed for certification shall be granted a certificate.*
- (6) *All fees collected under the provisions of this section shall be paid into the State Treasury and credited to the Kentucky personal services agency fund created by Section 4 of this Act.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 216 IS CREATED TO READ AS FOLLOWS:

- (1) *Any personal services agency that provides services without receiving certification pursuant to Section 2 of this Act may be fined up to five hundred dollars (\$500) per day.*
- (2) *Any business that markets its services as a personal services agency without receiving certification pursuant to Section 2 of this Act may be fined up to five hundred dollars (\$500) per day.*
- (3) *All fines collected pursuant to this section shall be deposited in the fund established by Section 4 of this Act.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *There is created a trust and agency fund to be known as the Kentucky personal services agency fund.*  
 (b) *The fund shall be administered by the Finance and Administration Cabinet.*  
 (c) *The fund shall be funded with moneys collected under Sections 2 and 3 of this Act.*
- (2) *Moneys in the fund shall be used by a department designated by the secretary of the Cabinet for Health and Family Services to administer Sections 2 and 3 of this Act. The amount expended to administer Sections 2 and 3 of this Act shall not exceed the amount collected under Sections 2 and 3 of this Act.*
- (3) *Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in subsection (2) of this section.*
- (4) *Interest earned on any moneys in the account shall accrue to the account.*
- (5) *Moneys in the fund are hereby appropriated for the purposes set forth in Sections 2 and 3 of this Act.*

**Signed by the Governor March 24, 2009.**

**CHAPTER 84****(SB 48)**

AN ACT relating to cigarettes.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 131.604 is amended to read as follows:

As used in KRS 131.604 to 131.630:

- (1) "Brand family" means all styles of cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including but not limited to menthol, lights, kings, and 100's, and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.
- (2) "Distributor" means a person, wherever residing or located, who purchases nontax-paid cigarettes and stores, sells, or otherwise disposes of the cigarettes. This includes resident wholesalers, nonresident wholesalers, and unclassified acquirers as defined in KRS 138.130.
- (3) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.
- (4) "Participating manufacturer" has the meaning given the term in Section II(jj) of the master settlement agreement and all amendments thereto.
- (5) "Stamping agent" means a person, including a distributor, that is authorized to affix tax stamps to packages or other containers or cigarettes pursuant to KRS 138.146 or any person that is required to pay the excise tax imposed pursuant to KRS 138.155.
- (6) "Master settlement agreement" has the same meaning as in KRS 131.600.
- (7) "Cigarette" has the same meaning as in KRS 131.600.
- (8) "Commissioner" means the commissioner of the Department of Revenue.
- (9) "Department" means the Department of Revenue.
- (10) "Tobacco product manufacturer" has the same meaning as in KRS 131.600.
- (11) "Units sold" has the same meaning as in KRS 131.600.
- (12) "Qualified escrow fund" has the same meaning as in KRS 131.600.
- (13) ***"Directory" means the directory as provided in Section 2 of this Act.***

➔Section 2. KRS 131.610 is amended to read as follows:

- (1) The Attorney General shall develop and make available to the department for public inspection, to include publishing on the department's Web site, a listing of all tobacco product manufacturers that have provided current and accurate certifications pursuant to KRS 131.608 and all brand families that are listed in the certifications. The listing shall be referred to as the "directory" and completed no later than July 1 of each certification year.
- (2) The department shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the Attorney General determines is not in compliance with KRS 131.608, unless the Attorney General has determined that such violation has been satisfactorily cured.
- (3) Neither a tobacco product manufacturer nor a brand family shall be included or retained in the directory if the Attorney General determines, in the case of a nonparticipating manufacturer, that:
  - (a) Any escrow payment required pursuant to KRS 131.602 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General; or

- (b) Any outstanding final judgment, including interest thereon, for a violation of KRS 131.602 has not been fully satisfied for the brand family or the manufacturer.
- (4) Upon receipt of information from the Attorney General, the department shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this section and KRS 131.608 and 131.620.
- (5) (a) The department shall transmit, by electronic mail or other practicable means, notice to each stamping agent and distributor of any addition to or removal from the directory of any tobacco product manufacturer or brand family.
- (b) ***Within seven (7) days of receiving a removal notice from the department, each stamping agent or distributor shall forward:***
1. ***A copy of the removal notice to each of the stamping agent's or distributor's retail customers; and***
  2. ***To the department, a list of the retailer customers to whom the removal notices were sent.***
- (c) 1. ***The retailer shall have sixty (60) days from the effective date of the removal notice to sell the affected cigarettes before the cigarettes are deemed contraband and become subject to seizure and destruction under Section 4 of this Act.***
2. ***On and after the sixty-first day from the effective date of the removal notice, the retailer shall not sell any cigarettes of a tobacco product manufacturer or brand family that has been removed from the directory.***
- ~~(6)(5)~~ Every stamping agent and distributor shall provide and update as necessary an electronic mail address to the department for the purpose of receiving any notifications that may be required by this section and KRS 131.608, 131.616, 131.620, and 131.624.
- ~~(7)(6)~~ Notwithstanding the provisions of subsections (2) and (3) of this section, in the case of any nonparticipating manufacturer who has established a qualified escrow account pursuant to KRS 131.602 that has been approved by the Attorney General, the Attorney General may not remove the manufacturer or its brand families from the directory unless the manufacturer has been given at least thirty (30) days' notice of the intended action. For the purposes of this section, notice shall be deemed sufficient if it is sent either electronically to an electronic-mail address or by first class to a postal mailing address provided by the manufacturer in its most recent certification filed pursuant to KRS 131.608. The notified nonparticipating manufacturer shall have thirty (30) days from receipt of the notice to comply. At the time that the Attorney General sends notice of his or her intent to remove the manufacturer from the directory, the Attorney General shall post the notice in the directory.
- (8) ***Beginning on the day after the Attorney General posts a notice in the directory of the Attorney General's intent to remove the nonparticipating manufacturer from the directory as provided in subsection (7) of this section, a stamping agent or distributor shall not purchase cigarettes from the nonparticipating manufacturer unless and until the Attorney General determines that the nonparticipating manufacturer is in compliance with KRS 131.608 and posts the notification of compliance in the directory.***

➔Section 3. KRS 131.612 is amended to read as follows:

It shall be unlawful for:

- (1) Any stamping agent or distributor to affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory; *or*
- (2) ***Any retailer to sell cigarettes from a tobacco product manufacturer or brand family sixty-one (61) days or more after the effective date of the removal of the tobacco product manufacturer or brand family from the directory.***

➔Section 4. KRS 131.622 is amended to read as follows:

- (1) (a) ***The following shall be contraband and subject to seizure and destruction:***
  1. Any cigarettes that have been affixed with a stamp in this state in violation of KRS 131.612; *or*

2. *Any cigarettes in the possession of a retailer after the sixty (60) day grace period as provided in subsection (5)(c) of Section 2 of this Act from a tobacco product manufacturer or brand family that has been removed from the directory* ~~shall be deemed contraband and subject to seizure and forfeiture pursuant to KRS 138.165. Cigarettes seized in accordance with this section shall be destroyed and not resold.~~
- (b) *Whenever any peace officer of this state, or any representative of the department, finds any contraband cigarettes, the cigarettes shall be immediately seized and stored in a depository to be selected by the officer or representative.*
- (c) *The seized cigarettes shall be held for a period of twenty (20) days to allow the owner or any person having an interest in the cigarettes to protest the seizure.*
- (d) *At the time of seizure, the officer or representative shall:*
1. *Notify the department of the nature and quantity of the cigarettes seized; and*
  2. *Deliver to the person in whose custody the cigarettes are found a receipt for the cigarettes. The receipt shall state on its face the date of seizure, and a notice that the cigarettes shall be destroyed if the seizure is not protested in writing to the Department of Revenue, Frankfort, Kentucky, within twenty (20) days from the seizure.*
- (e) *The owner or any person having an interest in the seized cigarettes may appeal to the Kentucky Board of Tax Appeals a final determination made by the department pursuant to KRS 131.340.*
- (f) *If the owner or any person having an interest in the seized cigarettes fails to protest the seizure before the end of the twenty (20) day holding period, the department shall destroy the seized cigarettes.*
- (2) The Attorney General may seek an injunction to restrain a violation of KRS 131.612 or 131.616 by a distributor or stamping agent and to compel the distributor or stamping agent to comply with KRS 131.612 and 131.616. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney fees from any distributor or stamping agent found to be in violation of KRS 131.612 or 131.616.
- (3) No stamping agent or distributor shall sell or distribute cigarettes, or acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the stamping agent knows are intended for distribution or sale in the state in violation of KRS 131.612. A violation of this section is a Class A misdemeanor.
- (4) Nothing in this section shall prohibit a stamping agent or distributor from possessing unstamped containers of cigarettes held in inventory for delivery to, or for sale in, another state.
- (5) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent or distributor has violated KRS 131.612 or any regulation adopted pursuant to KRS 131.604 to 131.630, the commissioner may suspend the sale of cigarette stamps to the stamping agent or distributor for failure to comply with the provisions of KRS 131.604 to 131.630.

➔Section 5. (1) The staff of the Legislative Research Commission shall conduct a study to review the initial certification process and subsequent recertification process and escrow requirements of the Tobacco Master Settlement Agreement and the related impacts on participating manufacturers, nonmanufacturers, stamping agents or distributors, and retailers.

(2) Staff shall transmit the results of the study to the Legislative Research Commission, for distribution to the Interim Joint Committee on Appropriations and Revenue, by November 1, 2010.

(3) Provisions of subsections (1) and (2) of this section notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee, thereof, and to designate a study completion date.

➔Section 6. This Act takes effect July 1, 2009.

**Signed by the Governor March 24, 2009.**

## CHAPTER 85

### (HJR 105)

A JOINT RESOLUTION outlining road projects with phases in the last four years of the six year highway plan.

WHEREAS, the resources dedicated to the Commonwealth's highway system have changed; and

WHEREAS, the General Assembly has the authority to amend the six year highway plan;

NOW, THEREFORE,

***Be it resolved by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. Notwithstanding KRS 45.245, 45.246, 45.247, 176.419(2), 176.420, 176.430, and 176.440, the projects identified by the General Assembly in this Act shall constitute the road plan for projects with phases in the last four years of the six year road plan.

➔Section 2. This Act in conjunction with 09 HB 330 shall constitute the six year road plan.

➔Section 3. The 2010-2014 road plan is as follows:









































































































































































































Signed by the Governor March 24, 2009.

CHAPTER 86

(HB 216)

AN ACT relating to fiscal matters and declaring an emergency.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 136.392 is repealed and reenacted to read as follows:

- (1) (a) Every domestic, foreign, or alien insurer, other than life and health insurers, which is either subject to or exempted from Kentucky premium taxes as levied pursuant to the provisions of either KRS 136.340, 136.350, 136.370, or 136.390, shall charge and collect a surcharge of one dollar and fifty cents (\$1.50) upon each one hundred dollars (\$100) of premium, assessments, or other charges, except for those municipal premium taxes, made by it for insurance coverage provided to its policyholders, on risk located in this state, whether the charges are designated as premiums, assessments, or otherwise. The premium surcharge shall be collected by the insurer from its policyholders at the same time and in the same manner that its premium or other charge for the insurance coverage is collected. The premium surcharge shall be disclosed to policyholders pursuant to administrative regulations promulgated by the executive director of insurance. However, no insurer or its agent shall be entitled to any portion of any premium surcharge as a fee or commission for its collection. On or before the twentieth day of each month, each insurer shall report and remit to the Department of Revenue, on forms as it may require, all premium surcharge moneys collected by it during its preceding monthly accounting period less any moneys returned to policyholders as applicable to the unearned portion of the premium on policies terminated by either the insured or the insurer. Insurers with an annual liability of less than one thousand dollars (\$1,000) for each of the previous two (2) calendar years may report and remit to the Department of Revenue all premium surcharge moneys collected on a calendar year basis on or before the twentieth day of January of the following calendar year. The funds derived from the premium surcharge shall be deposited in the State Treasury, and shall constitute a fund allocated for the uses and purposes of the Firefighters Foundation Program fund, KRS 95A.220 and 95A.262, and the Law Enforcement Foundation Program fund, KRS 15.430.
  - (b) Effective July 1, 1992, the surcharge rate in paragraph (a) of this subsection shall be adjusted by the commissioner of revenue to a rate calculated to provide sufficient funds for the uses and purposes of the Firefighters Foundation Program fund as prescribed by KRS 95A.220 and 95A.262 and the Law Enforcement Foundation Program fund as prescribed by KRS 15.430 for each fiscal year. The rate shall be calculated using as its base the number of local government units eligible for participation in the funds under applicable statutes as of January 1, 1994. To allow the commissioner of revenue to calculate an appropriate rate, the secretary of the Environmental and Public Protection Cabinet and the secretary for the Justice and Public Safety Cabinet shall certify to the commissioner of revenue, no later than January 1 of each year, the estimated budgets for the respective funds specified above, including any surplus moneys in the funds, which shall be incorporated into the consideration of the adjusted rate for the next biennium. As soon as practical, the commissioner of revenue shall advise the executive director of insurance of the new rate and the executive director shall inform the affected insurers. The rate adjustment process shall continue on a biennial basis.
- (2) Within five (5) days after the end of each month, all insurance premium surcharge proceeds deposited in the State Treasury as set forth in this section shall be paid by the State Treasurer into the Firefighters Foundation Program fund trust and agency account and the Law Enforcement Foundation Program fund trust and agency account. The amount paid into each account shall be proportionate to each fund's respective share of the total deposits, pursuant to KRS 42.190. Moneys deposited to the Law Enforcement Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered, or transferred by any state official for uses and purposes other than those prescribed by KRS 15.410 to 15.500, except that beginning with fiscal year 1994-95, through June 30, 1999, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse. On and after July 1, 1999, moneys in this account shall not lapse. Money deposited to the Firefighters Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered, or transferred by any state official for uses and purposes other than those prescribed by

KRS 95A.200 to 95A.300, except that beginning with fiscal year 1994-95, through June 30, 1999, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse, but moneys in the revolving loan fund established in KRS 95A.262 shall not lapse. On and after July 1, 1999, moneys in this account shall not lapse.

- (3) Insurance premium surcharge funds collected from the policyholders of any domestic mutual company, cooperative, or assessment fire insurance company shall be deposited in the State Treasury, and shall be paid monthly by the State Treasurer into the Firefighters Foundation Program fund trust and agency account as provided in KRS 95A.220 to 95A.262. However, insurance premium surcharge funds collected from policyholders of any mutual company, cooperative, or assessment fire insurance company which transfers its corporate domicile to this state from another state after July 15, 1994, shall continue to be paid into the Firefighters Foundation Program fund and the Law Enforcement Foundation Program fund as prescribed.
- (4) No later than July 1 of each year, the Office of Insurance shall provide the Department of Revenue with a list of all Kentucky-licensed property and casualty insurers and the amount of premium volume collected by the insurer for the preceding calendar year as set forth on the annual statement of the insurer. No later than September 1 of each year, the Department of Revenue shall calculate an estimate of the premium surcharge due from each insurer subject to the insurance premium surcharge imposed pursuant to this section, based upon the surcharge rate imposed pursuant to this section and the amount of the premium volume for each insurer as reported by the Office of Insurance. The Department of Revenue shall compare the results of this estimate with the premium surcharge paid by each insurer during the preceding year and shall provide the Legislative Research Commission, the Commission on Fire Protection Personnel Standards and Education, the Kentucky Law Enforcement Council, and the Office of Insurance with a report detailing its findings on a cumulative basis. In accordance with KRS 131.190, the Department of Revenue shall not identify or divulge the confidential tax information of any individual insurer in this report.
- (5) The insurance premiums surcharge provided in this section shall not apply to premiums collected from the following:
  - (a) The federal government;
  - (b) Resident educational and charitable institutions qualifying under Section 501(c)(3) of the Internal Revenue Code;
  - (c) Resident nonprofit religious institutions for real, tangible, and intangible property coverage only;
  - (d) State government for coverage of real property; or
  - (e) Local governments for coverage of real property.

➔Section 2. KRS 138.195 is repealed and reenacted to read as follows:

- (1) No person other than a manufacturer shall acquire cigarettes in this state on which the Kentucky cigarette tax has not been paid, nor act as a resident wholesaler, nonresident wholesaler, vending machine operator, sub-jobber, transporter or unclassified acquirer of such cigarettes without first obtaining a license from the department as set out in this section.
- (2) Each resident wholesaler shall secure a separate license for each place of business at which cigarette tax evidence is affixed or at which cigarettes on which the Kentucky cigarette tax has not been paid are received. Each nonresident wholesaler shall secure a separate license for each place of business at which evidence of Kentucky cigarette tax is affixed or from where Kentucky cigarette tax is reported and paid. Such a license or licenses shall be secured on or before July 1 of each year, and each licensee shall pay the sum of five hundred dollars (\$500) for each such year or portion thereof for which such license is secured.
- (3) Each sub-jobber shall secure a separate license for each place of business from which Kentucky tax-paid cigarettes are made available to retailers, whether such place of business is located within or without this state. Such license or licenses shall be secured on or before July 1 of each year, and each licensee shall pay the sum of five hundred dollars (\$500) for each such year or portion thereof for which such license is secured.
- (4) Each vending machine operator shall secure a license for the privilege of dispensing Kentucky tax-paid cigarettes by vending machines. Such license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of twenty-five dollars (\$25) for each year or portion thereof for which such license is secured. No vending machine shall be operated within this Commonwealth without having prominently affixed

thereto the name of its operator, together with the license number assigned to such operator by the department. The department shall prescribe by regulation the manner in which the information shall be affixed to the vending machine.

- (5) Each transporter shall secure a license for the privilege of transporting cigarettes within this state. Such license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of fifty dollars (\$50) for each such year or portion thereof for which such license is secured. No transporter shall transport any cigarettes without having in actual possession an invoice or bill of lading therefor, showing the name and address of the consignor and consignee, the date acquired by the transporter, the name and address of the transporter, the quantity of cigarettes being transported, together with the license number assigned to such transporter by the department.
- (6) Each unclassified acquirer shall secure a license for the privilege of acquiring cigarettes on which the Kentucky cigarette tax has not been paid. Such license shall be secured on or before July 1 of each year, and each licensee shall pay the sum of fifty dollars (\$50) for each such year or portion thereof for which such license is secured.
- (7) Nothing in KRS 138.130 to 138.205 shall be construed to prevent the department from requiring a person to purchase more than one (1) license if the nature of such person's business is so diversified as to justify such requirement.
- (8) The department may by regulation require any person licensed under the provisions of this section to supply such information concerning his business, sales or any privilege exercised, as is deemed reasonably necessary for the regulation of such licensees, and to protect the revenues of the state. Failure on the part of such licensee to comply with the provisions of KRS 138.130 to 138.205 or any regulations promulgated thereunder, or to permit an inspection of premises, machines or vehicles by an authorized agent of the department at any reasonable time shall be grounds for the revocation of any license issued by the department, after due notice and a hearing by the department. The commissioner of the Department of Revenue may assign a time and place for such hearing and may appoint a conferee who shall conduct a hearing, receive evidence and hear arguments. Such conferee shall thereupon file a report with the commissioner together with a recommendation as to the revocation of such license. From any revocation made by the commissioner of the Department of Revenue on such report, the licensee may prosecute an appeal to the Kentucky Board of Tax Appeals as provided by law. Any person whose license has been revoked for the willful violation of any provision of KRS 138.130 to 138.205 shall not be entitled to any license provided for in this section, or have any interest in any such license, either disclosed or undisclosed, either as an individual, partnership, corporation or otherwise, for a period of one (1) year after such revocation.
- (9) No license issued pursuant to the provisions of this section shall be transferable or negotiable except that a license may be transferred between an individual and a corporation, if that individual is the exclusive owner of that corporation, or between a subsidiary corporation and its parent corporation.
- (10) Every manufacturer located or doing business in this state and the first person to import cigarettes, other tobacco products, or snuff from a foreign manufacturer shall keep written records of all shipments of cigarettes, other tobacco products, or snuff to persons within this state, and shall submit to the department monthly reports of such shipments.
- (11) No person licensed under this section except nonresident wholesalers shall either sell to or purchase from any other such licensee untax-paid cigarettes.
- (12) Wholesalers of other tobacco products and snuff shall pay and report the tax levied by KRS 138.140(4) and (5) on or before the twentieth day of the calendar month following the month in which the possession or title of the other tobacco products or smokeless tobacco products are transferred from the wholesaler to retailers or consumers in this state. The Department of Revenue shall promulgate administrative regulations setting forth the details of the reporting requirements.
- (13) A tax return shall be filed for each reporting period whether or not tax is due.  
➔Section 3. KRS 141.160 is repealed and reenacted to read as follows:
  - (1) All returns of income for the preceding taxable year shall be made by April 15 in each year, except returns made on the basis of a fiscal year, which shall be made by the fifteenth day of the fourth month following the close of the fiscal year. Blank forms for returns of income shall be supplied by the department.

- (2) Whenever, in the opinion of the department, it is necessary to examine the federal income tax return or a copy thereof of any taxpayer in order to audit his return, the department may compel the taxpayer to produce for inspection a copy of his federal return and all statements and schedules in support thereof. The department may also require copies of reports of adjustments made by the federal government.
- (3) Notwithstanding subsection (1) of this section, all returns of income for the preceding taxable year made by cooperatives as described in Sections 521 and 1381 of the Internal Revenue Code or by KRS Chapter 272 shall be made by September 15 in each year, except returns made on the basis of a fiscal year, which shall be made by the fifteenth day of the ninth month following the close of the fiscal year.

➔Section 4. KRS 160.6156 is repealed and reenacted to read as follows:

- (1) Any utility service provider that has paid the utility gross receipts tax imposed by a school district pursuant to KRS 160.613 and 160.614 may request a refund or credit for any overpayment of tax or any payment where no tax was due within two (2) years after the tax due date, including any extensions granted.
- (2) A request for refund shall be in writing, and shall be made to the department with a copy to the school district to which the tax was allocated. The request shall state the amount requested, the applicable period, and the basis for the request.
- (3)
  - (a) Refunds shall be authorized by the department, in consultation with the chairman or finance officer of the district board of education, with interest as provided in KRS 131.183.
  - (b) Notwithstanding paragraph (a) of this subsection, a utility service provider shall not be entitled to a refund or credit of the taxes paid under KRS 160.613 or 160.614 if the utility service provider has increased its rates in accordance with KRS 160.617, unless the utility service provider refunds or credits its related customers the amount of overpayment made to the department.
- (4) The department shall make authorized tax refunds, including interest, from current tax collections in its possession allocated for distribution to the affected district. Applicable school district distributions and the department administrative expense allocation provided for pursuant to KRS 160.6154(2) shall be adjusted proportionately to reflect refunds paid. If sufficient funds are not available from the current distribution cycle, the department shall pay refunds from subsequent amounts collected for distribution to the affected district until all refund payments, including interest, have been completed.
- (5) If the department denies a requested refund in whole or in part, the taxpayer may appeal the denial to the Circuit Court in the county where the school district is located.

➔Section 5. KRS 160.6157 is repealed and reenacted to read as follows:

- (1) The uniform penalty provisions of KRS 131.180 shall apply to all taxes levied by school districts pursuant to KRS 160.613 and 160.614.
- (2) In addition to the penalties provided by KRS 131.180 and the taxes imposed under KRS 160.613 and 160.614, any utility service provider that erroneously bills customers after being notified of the error by the department shall be subject to a penalty of twenty-five dollars (\$25) per subsequent error, not to exceed ten thousand dollars (\$10,000) per month.

➔Section 6. KRS 160.6158 is repealed and reenacted to read as follows:

- (1) Notwithstanding any other provisions to the contrary, the commissioner of the department, in consultation with an impacted school district, shall waive any penalty, but not interest, where it is shown to the satisfaction of the department that the failure to file or pay timely is due to reasonable cause.
- (2) The penalty imposed by KRS 160.6157(2) may be waived by the department based on reasonable cause.

➔Section 7. KRS 131.183 is repealed and reenacted to read as follows:

- (1)
  - (a) All taxes payable to the Commonwealth not paid at the time prescribed by statute shall accrue interest at the tax interest rate.
  - (b) The tax interest rate shall be equal to the adjusted prime rate charged by banks rounded to the nearest full percent as adjusted by subsection (2) of this section.
  - (c) The commissioner of revenue shall adjust the tax interest rate not later than November 15 of each year if the adjusted prime rate charged by banks during October of that year, rounded to the nearest full

percent, is at least one (1) percentage point more or less than the tax interest rate which is then in effect. The adjusted tax interest rate shall become effective on January 1 of the immediately succeeding year.

- (2) (a) 1. All taxes payable to the Commonwealth that have not been paid at the time prescribed by statute shall accrue interest at the tax interest rate as determined in accordance with subsection (1) of this section until May 1, 2008.
2. Beginning on May 1, 2008, all taxes payable to the Commonwealth that have not been paid at the time prescribed by statute shall accrue interest at the tax interest rate as determined in accordance with subsection (1) of this section plus two percent (2%).
- (b) 1. Interest shall be allowed and paid upon any overpayment as defined in KRS 134.580 in respect of any of the taxes provided for in Chapters 131, 132, 134, 136, 137, 138, 139, 140, 141, 142, 143, 143A, and 243 of the Kentucky Revised Statutes and KRS 160.613 and 160.614 at the rate provided in subsection (1) of this section until May 1, 2008.
2. Beginning on May 1, 2008, interest shall be allowed and paid upon any overpayment as defined in KRS 134.580 at the rate provided in subsection (1) of this section minus two percent (2%).
3. Effective for refunds issued after April 24, 2008, except for the provisions of KRS 138.351, 141.044(2), 141.235(3), and subsection (3) of this section, interest authorized under this subsection shall begin to accrue sixty (60) days after the latest of:
  - a. The due date of the return;
  - b. The date the return was filed;
  - c. The date the tax was paid;
  - d. The last day prescribed by law for filing the return; or
  - e. The date an amended return claiming a refund is filed.
- (c) In no case shall interest be paid in an amount less than five dollars (\$5).
- (3) Effective for refund claims filed on or after July 15, 1992, if any overpayment of the tax imposed under KRS Chapter 141 results from a carryback of a net operating loss or a net capital loss, the overpayment shall be deemed to have been made on the date the claim for refund was filed. Interest authorized under subsection (2) of this section shall begin to accrue ninety (90) days from the date the claim for refund was filed.
- (4) No interest shall be allowed or paid on any sales tax refund as provided by KRS 139.536.

➔Section 8. KRS 141.044 is repealed and reenacted to read as follows:

- (1) The estimated tax provided for in KRS 141.042 shall be paid as follows:
  - (a) If the declaration is filed on or before June 15 of the taxable year, the estimated tax shall be paid in three (3) installments. The first installment, in an amount equal to fifty percent (50%) of the estimated tax, shall be paid at the time of the filing of the declaration. The second and third installments, each in an amount equal to twenty-five percent (25%) of the estimated tax, shall be paid on September 15 and December 15, respectively, of the taxable year;
  - (b) If the declaration is filed after June 15 and not after September 15 of the taxable year and is not required by KRS 141.042 to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two (2) installments. The first installment, in an amount equal to seventy-five percent (75%) of the estimated tax, shall be paid at the time of the filing of the declaration and the second installment, in an amount equal to twenty-five percent (25%) of the estimated tax, on December 15 of the taxable year;
  - (c) If the declaration is filed after September 15 of the taxable year and is not required to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration;
  - (d) If the declaration is filed after the time prescribed in KRS 141.042, including cases where extensions of time have been granted, paragraphs (a), (b), and (c) of this subsection shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in KRS 141.042, and the

remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

- (2) (a) A refund of taxes collected pursuant to KRS 141.042 shall include interest at the tax interest rate as defined in KRS 131.010(6).
- (b) Effective for refunds issued after April 24, 2008, the interest shall not begin to accrue until ninety (90) days after the latest of:
  - 1. The due date of the return;
  - 2. The date the return was filed;
  - 3. The date the tax was paid;
  - 4. The last day prescribed by law for filing the return, or
  - 5. The date an amended return claiming a refund is filed.
- (3) (a) Overpayment as defined in KRS 134.580 resulting from the payment of estimated tax in excess of the amount determined to be due upon the filing of a return for the same taxable year may be credited against the amount of estimated tax determined to be due on any declaration filed for the next succeeding taxable year or for any deficiency or nonpayment of tax for any previous taxable year;
- (b) No refund shall be made of any estimated tax paid unless a complete return is filed as required by this chapter.
- (4) At the election of the taxpayer, any installment of the estimated tax may be paid prior to the date prescribed for its payment.
- (5) In the application of this section and KRS 141.042 for a taxable year beginning on any date other than January 1, there shall be substituted for the months specified in this section and KRS 141.042 the relative months and dates which correspond to that taxable year.

➔Section 9. KRS 141.235 is repealed and reenacted to read as follows:

- (1) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied by this chapter.
- (2) Any tax collected pursuant to the provisions of this chapter may be refunded or credited in accordance with the provisions of KRS 134.580, except that:
  - (a) In any case where the assessment period contained in KRS 141.210 has been extended by an agreement between the taxpayer and the department, the limitation contained in this subsection shall be extended accordingly.
  - (b) If the claim for refund or credit relates directly to adjustments resulting from a federal audit, the taxpayer shall file a claim for refund or credit within the time provided for in this subsection or six (6) months from the conclusion of the federal audit, whichever is later.
  - (c) If the claim for refund or credit relates to an overpayment attributable to a net operating loss carryback or capital loss carryback, resulting from a loss which occurs in a taxable year beginning after December 31, 1993, the claim for refund or credit shall be filed within the times prescribed in this subsection for the taxable year of the net operating loss or capital loss which results in the carryback.

For the purposes of this subsection and subsection (3) of this section, a return filed before the last day prescribed by law for filing the return shall be considered as filed on the last day.

- (3) Overpayments as defined in KRS 134.580 of taxes collected pursuant to KRS 141.300, 141.310, or 141.315 shall be refunded or credited with interest at the tax interest rate as defined in KRS 131.010(6). Effective for refunds issued after April 24, 2008, the interest shall not begin to accrue until ninety (90) days after the latest of:
  - (a) The due date of the return;
  - (b) The date the return was filed;

- (c) The date the tax was paid;
  - (d) The last day prescribed by law for filing the return; or
  - (e) The date an amended return claiming a refund is filed.
- (4) Exclusive authority to refund or credit overpayments of taxes collected pursuant to this chapter is vested in the commissioner or his authorized agent. Amounts directed to be refunded shall be paid out of the general fund.

➔Section 10. KRS 134.580 is repealed and reenacted to read as follows:

- (1) As used in this section, unless the context requires otherwise:
- (a) "Agency" means the agency of state government which administers the tax to be refunded or credited.
  - (b) "Overpayment" or "payment where no tax was due" means the excess of the tax payments made over the correct tax liability determined under the terms of the applicable statute without reference to the constitutionality of the statute.
- (2) When money has been paid into the State Treasury in payment of any state taxes, except ad valorem taxes, whether payment was made voluntarily or involuntarily, the appropriate agency shall authorize refunds to the person who paid the tax, or to his heirs, personal representatives or assigns, of any overpayment of tax and any payment where no tax was due. When a bona fide controversy exists between the agency and the taxpayer as to the liability of the taxpayer for the payment of tax claimed to be due by the agency, the taxpayer may pay the amount claimed by the agency to be due, and if an appeal is taken by the taxpayer from the ruling of the agency within the time provided by KRS 131.340 and it is finally adjudged that the taxpayer was not liable for the payment of the tax or any part thereof, the agency shall authorize the refund or credit as the Kentucky Board of Tax Appeals or courts may direct.
- (3) No refund shall be made unless each taxpayer individually files an application or claim for the refund within four (4) years from the date payment was made. Each claim or application for a refund shall be in writing and state the specific grounds upon which it is based. Denials of refund claims or applications may be protested and appealed in accordance with KRS 131.110 and 131.340.
- (4) Refunds shall be authorized with interest as provided in KRS 131.183. The refunds authorized by this section shall be made in the same manner as other claims on the State Treasury are paid. They shall not be charged against any appropriation, but shall be deducted from tax receipts for the current fiscal year.
- (5) Nothing in this section shall be construed to authorize the agency to make or cause to be made any refund except within four (4) years of the date prescribed by law for the filing of a return including any extension of time for filing the return, or the date the money was paid into the State Treasury, whichever is the later, except in any case where the assessment period has been extended by written agreement between the taxpayer and the department, the limitation contained in this subsection shall be extended accordingly. Nothing in this section shall be construed as requiring the agency to authorize any refund to a taxpayer without demand from the taxpayer, if in the opinion of the agency the cost to the state of authorizing the refund would be greater than the amount that should be refunded or credited.
- (6) This section shall not apply to any case in which the statute may be held unconstitutional, either in whole or in part.
- (7) In cases in which a statute has been held unconstitutional, taxes paid thereunder may be refunded to the extent provided by KRS 134.590, and by the statute held unconstitutional.
- (8) No person shall secure a refund of motor fuels tax under KRS 134.580 unless the person holds an unrevoked refund permit issued by the department before the purchase of gasoline or special fuels and that permit entitles the person to apply for a refund under KRS 138.344 to 138.355.
- (9) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary:
- (a) The Commonwealth hereby revokes and withdraws its consent to suit in any forum whatsoever on any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return. No such claim shall be effective or recognized for any purpose.

- (b) Any stated or implied consent for the Commonwealth of Kentucky, or any agent or officer of the Commonwealth of Kentucky, to be sued by any person for any legal, equitable, or other relief with respect to any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return, is hereby withdrawn.
  - (c) The provisions of this subsection shall apply retroactively for all taxable years ending before December 31, 1995, and shall apply to all claims for such taxable years pending in any judicial or administrative forum.
- (10) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary:
- (a) No money shall be drawn from the State Treasury for the payment of any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return.
  - (b) No provision of the Kentucky Revised Statutes shall constitute an appropriation or mandated appropriation for the payment of any claim for recovery, refund, or credit of any tax overpayment for any taxable year ending before December 31, 1995, made by an amended return or any other method after December 22, 1994, and based on a change from any initially filed separate return or returns to a combined return under the unitary business concept or to a consolidated return.

➔Section 11. KRS 393.060 is repealed and reenacted to read as follows:

The following property held or owing by a banking or financial organization is presumed abandoned:

- (1) Any deposit (legal, beneficial, equitable, or otherwise), whether payable on demand or a time deposit, including a deposit that is automatically renewable, in any bank or trust company in this state, together with the interest thereon and less any deductions permissible under state or federal law including but not limited to dormancy fees and service charges, unless the owner has within three (3) years or within three (3) years of the first date of maturity, in the instance of a time deposit:
  - (a) Communicated in writing or by other means, reflected in a contemporaneous record prepared by or on behalf of the bank or trust company, with the bank or trust company concerning it;
  - (b) Been credited with interest on his request or by his action;
  - (c) Had a transfer, disposition of interest, or other transaction noted of record in the books or records of the bank or trust company;
  - (d) Increased or decreased the amount of the deposit; or
  - (e) Has not received a regularly mailed statement of account or other notification or communication, mailed by the bank or trust company. Mailings shall be considered not received if returned to the bank or trust company marked undeliverable by the United States Postal Service or other provider of delivery services. A mailing shall be considered regularly mailed if it is of the type sent to all owners of a certain category of deposit and is mailed no less than annually;
- (2) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and traveler's checks, that with the exception of traveler's checks has been outstanding for more than three (3) years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of traveler's checks that has been outstanding for more than seven (7) years from the date of its issuance unless the owner has within three (3) years or within seven (7) years in the case of traveler's checks corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization;
- (3) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale

thereof pursuant to law, that have been unclaimed by the owner for more than three (3) years from the date on which the lease or rental period expired.

➔Section 12. KRS 157.621 is repealed and reenacted to read as follows:

- (1) In addition to the levy required by KRS 157.440(1)(b) to participate in the Facilities Support Program of Kentucky, local school districts that have made the levy required by KRS 157.440(1)(b) are authorized to levy the following additional equivalent rates to support debt service, new facilities, or major renovations of existing school facilities, which levies shall not be subject to recall under any provision of the Kentucky Revised Statutes, or to voter approval under the provisions of KRS 157.440(2):
- (a) 1. Prior to April 24, 2008, local school districts that have experienced student population growth during a five (5) year period may levy an additional five cents (\$0.05) equivalent rate for debt service and new facilities. The tax rate levied by the district under this provision shall not be equalized by state funding, except as provided in paragraph (b) of this subsection. Any levy imposed under this paragraph prior to April 24, 2008, by a local school district shall continue until removed by the local school district.
2. A local school district shall meet the following criteria in order to levy the tax provided in subparagraph 1. of this paragraph:
- Growth of at least one hundred fifty (150) students in average daily attendance and three percent (3%) overall growth for the five (5) preceding years;
  - Bonded debt to the maximum capability of at least eighty percent (80%) of capital outlay from the Support Education Excellence in Kentucky funding program, all revenue from the local facility tax, and all receipts from state equalization on the local facility tax;
  - Current student enrollment in excess of available classroom space; and
  - A local school facility plan that has been approved by the Kentucky Board of Education and certified to the School Facilities Construction Commission.
- (b) 1. In addition to the levy authorized by paragraph (a) of this subsection, a local school district may levy an additional five cents (\$0.05) equivalent rate under the same terms and conditions established by paragraph (a) of this subsection beginning in fiscal year 2003-2004 if the levy was made prior to April 24, 2008, and if the local school district:
- Levied the five cents (\$0.05) equivalent rate authorized by paragraph (a) of this subsection; and
  - Still meets the requirements established by paragraph (a)2. of this subsection.
2. Any school district that imposes both the levy authorized by paragraph (a) of this subsection and the additional levy authorized by subparagraph 1. of this paragraph shall receive equalization funding from the state for the levy imposed by paragraph (a) of this subsection beginning in fiscal year 2003-2004. Equalization shall be provided at one hundred fifty percent (150%) of the statewide average per pupil assessment, subject to the provision of funding by the General Assembly. Equalization funds shall be used as provided in KRS 157.440(1)(b).
3. Any levy imposed under this paragraph prior to April 24, 2008, by a local school district shall continue until removed by the local school district.
- (c) 1. A local school district that meets the following conditions may levy an additional five cents (\$0.05) equivalent rate on and after April 24, 2008:
- The local school district is located in a county that will have more students as a direct result of the new mission established for Fort Knox by the Base Realignment and Closure (BRAC) 2005 issued by the United States Department of Defense pursuant to the Defense Base Closure and Realignment Act of 1990, Pub. L. No. 100-526, Part A of Title XXIX of 104 Stat. 1808, 10 U.S.C. sec. 2687 note; and
  - The commissioner of education has determined, based upon the presentation of credible data, that the projected increased number of students is sufficient to require new facilities or the major renovation of existing facilities to accommodate the new students, and has approved the imposition of the additional levy.

2. Any local school district that imposes both the levy authorized by paragraph (a) of this subsection and the additional levy authorized by subparagraph 1. of this paragraph, and that has not received equalization funding under subsection (2) or (3) of this section, shall receive equalization funding from the state for the levy imposed by paragraph (a) of this subsection beginning in the fiscal year following the fiscal year in which the levy authorized by subparagraph 1. of this paragraph is imposed. Equalization shall be provided at one hundred fifty percent (150%) of the statewide average per pupil assessment, subject to the provision of funding by the General Assembly. Equalization funds shall be used as provided in KRS 157.440(1)(b).
  3. Any levy imposed under this paragraph by a local school district shall continue until removed by the local school district.
- (2) Any local school district that, prior to April 24, 2008, levied an equivalent rate that:
- (a) Was subject to recall at the time it was levied; and
  - (b) Included a rate of at least five cents (\$0.05) equivalent rate for the purpose of debt service for school construction or major renovation of existing school facilities;

shall be eligible for retroactive equalization from the state for that levy at one hundred fifty percent (150%) of the statewide average per pupil assessment beginning in fiscal year 2003-2004, subject to the provision of funding by the General Assembly. Equalization funds shall be used as provided in KRS 157.440(1)(b).

- (3) Any local school district that:
- (a) Levied an equivalent tax rate as of April 24, 2008, that included at least ten cents (\$0.10) that was devoted to building purposes, or that had debt service corresponding to a ten cents (\$0.10) equivalent rate;
  - (b) Did not receive equalized growth funding pursuant to subsection (1)(b)2. of this section; and
  - (c) Has been approved by the commissioner of education;

shall be eligible for equalization from the state for that levy at one hundred fifty percent (150%) of the statewide average per pupil assessment beginning in fiscal year 2005-2006, subject to the provision of funding by the General Assembly. Equalization funds shall be used as provided in KRS 157.440(1)(b). Equalization funds shall be available to a local school district pursuant to this subsection until the earlier of June 30, 2025, or the date the bonds for the local school district supported by this equalization funding are retired.

- (4)
- (a) Notwithstanding any other provision of this section, any local school district receiving equalization funding on April 24, 2008, related to an equivalent rate levy described in subsection (1), (2), or (3) of this section shall continue to receive the equalization funding related to the applicable equivalent rate levy, subject to the limitations established by subsections (1), (2), and (3) of this section, and subject to the provision of funding by the General Assembly, until amended by subsequent action of the General Assembly. A local school district described in this paragraph shall not be eligible to receive equalization for any additional equivalent rate levies made by it on or after April 24, 2008.
  - (b) Notwithstanding any other provision of this section, any local school district that has imposed an equivalent rate levy described in subsection (1)(a) or (b) or (2) of this section as of April 24, 2008, that qualifies for equalization but that has not yet received equalization funding shall be eligible for equalization funding as provided in subsection (1)(a) or (b) or (2) of this section, subject to the provision of funding by the General Assembly.
  - (c) On and after April 24, 2008, a local school district not included in paragraph (a) or (b) of this subsection shall be prohibited from imposing an equivalent rate levy under the provisions of subsection (1)(a) or (b) of this section, and shall not be eligible for equalization funding under the provisions of this section.
  - (d) On and after April 24, 2008, a local school district meeting the requirements of subsection (1)(c) of this section may impose the levy authorized by subsection (1)(c) of this section, and shall qualify for equalization as provided in subsection (1)(c) of this section, subject to the provision of funding by the General Assembly.

➔Section 13. KRS 139.010 is amended to read as follows:

As used in this chapter, unless the context otherwise provides:

- (1) "Business" includes any activity engaged in by any person or caused to be engaged in by that person with the object of gain, benefit or advantage, either direct or indirect;
- (2) "Commonwealth" means the Commonwealth of Kentucky;
- (3) "Department" means the Department of Revenue;
- (4) (a) "Gross receipts" and "sales price" mean the total amount or consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:
  1. The retailer's cost of the property sold;
  2. The cost of the materials used, labor or service cost, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, or any other expense of the retailer;
  3. Charges by the retailer for any services necessary to complete the sale;
  4. Delivery charges, which are defined as charges by the retailer for the preparation and delivery to a location designated by the purchaser including transportation, shipping, postage, handling, crating, and packing; and
  5. Any amount for which credit is given to the purchaser by the retailer, other than credit for property traded when the property traded is of like kind and character to the property purchased and the property traded is held by the retailer for resale.
- (b) "Gross receipts" and "sales price" shall include consideration received by the retailer from a third party if:
  1. The retailer actually receives consideration from a third party and the consideration is directly related to a price reduction or discount on the sale to the purchaser;
  2. The retailer has an obligation to pass the price reduction or discount through to the purchaser;
  3. The amount of consideration attributable to the sale is fixed and determinable by the retailer at the time of the sale of the item to the purchaser; and
  4. One (1) of the following criteria is met:
    - a. The purchaser presents a coupon, certificate, or other documentation to the retailer to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;
    - b. The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser; or
    - c. The purchaser identifies himself or herself to the retailer as a member of a group or organization entitled to a price reduction or discount. A "preferred customer" card that is available to any patron does not constitute membership in such a group.
- (c) "Gross receipts" and "sales price" shall not include:
  1. Discounts, including cash, term, or coupons that are not reimbursed by a third party and that are allowed by a retailer and taken by a purchaser on a sale;
  2. Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
  3. Any taxes legally imposed directly on the purchaser that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

4. The amount charged for labor or services rendered in installing or applying the property or service sold, provided the amount charged is separately stated on the invoice, bill of sale, or similar document given to the purchaser.
- (d) As used in this subsection, "third party" means a person other than the purchaser;
- (5) "In this state" or "in the state" means within the exterior limits of the Commonwealth and includes all territory within these limits owned by or ceded to the United States of America;
- (6) (a) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental shall include future options to purchase the property or extend the terms of the agreement and agreements covering trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. sec. 7701(h)(1).
- (b) "Lease or rental" shall not include:
  1. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
  2. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of the required payments and payment of an option price that does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments; or
  3. Providing tangible personal property and an operator for the tangible personal property for a fixed or indeterminate period of time. To qualify for this exclusion, the operator must be necessary for the equipment to perform as designed, and the operator must do more than maintain, inspect, or setup the tangible personal property.
- (c) This definition shall apply regardless of the classification of a transaction under generally accepted accounting principles, the Internal Revenue Code, or other provisions of federal, state, or local law;
- (7) (a) "Machinery for new and expanded industry" means machinery:
  1. Used directly in a manufacturing or processing production process;
  2. Which is incorporated for the first time into a plant facility established in this state; and
  3. Which does not replace machinery in the plant facility unless that machinery purchased to replace existing machinery:
    - a. Increases the consumption of recycled materials at the plant facility by not less than ten percent (10%);
    - b. Performs different functions;
    - c. Is used to manufacture a different product; or
    - d. Has a greater productive capacity, as measured in units of production, than the machinery being replaced.
- (b) The term "machinery for new and expanded industry" does not include repair, replacement, or spare parts of any kind regardless of whether the purchase of repair, replacement, or spare parts is required by the manufacturer or vendor as a condition of sale or as a condition of warranty.
- (c) The term "processing production" shall include the processing and packaging of raw materials, in-process materials, and finished products; the processing and packaging of farm and dairy products for sale; and the extraction of minerals, ores, coal, clay, stone, and natural gas;
- (8) "Manufacturing" means any process through which material having little or no commercial value for its intended use before processing has appreciable commercial value for its intended use after processing by the machinery. The manufacturing or processing production process commences with the movement of raw materials from storage into a continuous, unbroken, integrated process and ends when the product being manufactured is packaged and ready for sale;

- (9) (a) "Occasional sale" includes:
1. A sale of property not held or used by a seller in the course of an activity for which he or she is required to hold a seller's permit, provided such sale is not one (1) of a series of sales sufficient in number, scope, and character to constitute an activity requiring the holding of a seller's permit. In the case of the sale of the entire, or a substantial portion of the nonretail assets of the seller, the number of previous sales of similar assets shall be disregarded in determining whether or not the current sale or sales shall qualify as an occasional sale; or
  2. Any transfer of all or substantially all the property held or used by a person in the course of such an activity when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer.
- (b) For the purposes of this subsection, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the property of such corporation or other entity;
- (10) "Person" includes any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit;
- (11) "Plant facility" means a single location that is exclusively dedicated to manufacturing or processing production activities. For purposes of this section, a location shall be deemed to be exclusively dedicated to manufacturing activities even if retail sales are made there, provided that the retail sales are incidental to the manufacturing activities occurring at the location. The term "plant facility" shall not include any restaurant, grocery store, shopping center, or other retail establishment;
- (12) "Prewritten computer software" means:
- (a) Computer software, including prewritten upgrades, that are not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two (2) or more prewritten computer software programs or portions thereof does not cause the combination to be other than prewritten computer software;
  - (b) Software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the original purchaser; or
  - (c) Any portion of prewritten computer software that is modified or enhanced in any manner, where the modification or enhancement is designed and developed to the specifications of a specific purchaser. When a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of the modifications or enhancements the person actually made. In the case of modified or enhanced prewritten software, if there is a reasonable, separately stated charge on an invoice or other statement of the price to the purchaser for the modification or enhancement, then the modification or enhancement shall not constitute prewritten computer software;
- (13) "Purchase" means any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration and includes:
- (a) When performed outside this state or when the customer gives a resale certificate, the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting;
  - (b) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price; and
  - (c) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication;
- (14) "Recycled materials" means materials which have been recovered or diverted from the solid waste stream and reused or returned to use in the form of raw materials or products;

- (15) "Recycling purposes" means those activities undertaken in which materials that would otherwise become solid waste are collected, separated, or processed in order to be reused or returned to use in the form of raw materials or products;
- (16) (a) "Repair, replacement, or spare parts" means any tangible personal property used to maintain, restore, mend, or repair machinery or equipment.
- (b) "Repair, replacement, or spare parts" does not include machine oils, grease, or industrial tools;
- (17) (a) "Retailer" means:
1. Every person engaged in the business of making retail sales or furnishing any services included in KRS 139.200;
  2. Every person engaged in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption *except as provided in paragraph (c) of this subsection*;
  3. Every person making more than two (2) retail sales during any twelve (12) month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy;
  4. Any person conducting a race meeting under the provision of KRS Chapter 230, with respect to horses which are claimed during the meeting.
- (b) When the department determines that it is necessary for the efficient administration of this chapter to regard any salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of the dealers, distributors, supervisors or employers, the department may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this chapter;
- (c) 1. *Any person making sales at a charitable auction for a qualifying entity shall not be a retailer for purposes of the sales made at the charitable auction if:*
- a. *The qualifying entity, not the person making sales at the auction, is sponsoring the auction;*
  - b. *The purchaser of tangible personal property at the auction directly pays the qualifying entity sponsoring the auction for the property and not the person making the sales at the auction; and*
  - c. *The qualifying entity, not the person making sales at the auction, is responsible for the collection, control, and disbursement of the auction proceeds.*
2. *If the conditions set forth in subparagraph 1. of this paragraph are met, the qualifying entity sponsoring the auction shall be the retailer for purposes of the sales made at the charitable auction.*
3. *For purposes of this paragraph, "qualifying entity" means a resident:*
- a. *Church;*
  - b. *School;*
  - c. *Civic club; or*
  - d. *Any other nonprofit charitable, religious, or educational organization;*
- (18) "Retail sale" means any sale, lease, or rental for any purpose other than resale, sublease, or subrent in the regular course of business of tangible personal property;
- (19) (a) "Sale" means the furnishing of any services included in KRS 139.200 and any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration and includes:

1. The producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for purchasers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing, or imprinting;
  2. A transaction whereby the possession of property is transferred, but the seller retains the title as security for the payment of the price; and
  3. A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the purchaser.
- (b) This definition shall apply regardless of the classification of a transaction under generally accepted accounting principles, the Internal Revenue Code, or other provisions of federal, state, or local law;
- (20) "Seller" includes every person engaged in the business of selling tangible personal property or services of a kind, the gross receipts from the retail sale of which are required to be included in the measure of the sales tax, and every person engaged in making sales for resale;
- (21) (a) "Storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.
- (b) "Storage" does not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state;
- (22) "Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses, regardless of the method of delivery, and includes natural, artificial, and mixed gas, electricity, water, steam, and prewritten computer software;
- (23) "Taxpayer" means any person liable for tax under this chapter; and
- (24) (a) "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, or by any transaction in which possession is given, except that it does not include the sale of that property in the regular course of business.
- (b) "Use" does not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

➔Section 14. Notwithstanding KRS 393.125, unclaimed securities held by the Department of the Treasury may be sold with the receipts, net of estimated claims to be paid, available for appropriation to the General Fund during the 2008-2010 biennium. The secretary of the Finance and Administration Cabinet shall determine when to initiate the sale of securities based on the market structure and the financial status of the Commonwealth at the time.

➔Section 15. The provisions of Sections 7 to 10 of this Act shall apply retroactively to all outstanding refund claims for taxable years ending prior to the effective date of this Act and shall apply to all claims for those taxable years pending in any judicial or administrative forum.

➔Section 16. The provisions of Section 13 of this Act take effect August 1, 2009.

➔Section 17. The intent of the General Assembly in repealing and reenacting KRS 136.392, 138.195, 141.160, 160.6156, 160.6157, 160.6158, 131.183, 141.044, 141.235, 134.580, 393.060, and 157.621 in Sections 1 to 12 of this Act is to affirm the amendments made to these sections in 2008 Ky. Acts ch. 132. The provisions in Sections 1 to 12 of this Act shall apply retroactively to April 24, 2008.

➔Section 18. To the extent that any provision included in this Act is considered new language, the provisions of KRS 446.145 requiring such new language to be underlined are notwithstanding.

➔Section 19. Whereas it is necessary to expediently address issues originally addressed in 2006 Ky. Acts ch. 252, an emergency is declared to exist, and Sections 1 to 12 of this Act take effect upon the Act's passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by the Governor March 24, 2009.**

## CHAPTER 87

### (HB 292)

AN ACT relating to financial matters of the Commonwealth, making an appropriation therefor, and declaring an emergency.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. 2008 Kentucky Acts Chapter 174, Section 1, is repealed, reenacted, and amended to read as follows:

The provisions of 2008 Regular Session HB 406/EN are amended as follows:

On page 5, line 26, delete "34,917,600" and insert "28,287,600";

Adjust subsequent subtotals and totals accordingly;

On page 9, line 24, delete "57,155,100" and insert "56,989,350";

Adjust subsequent subtotals and totals accordingly;

On page 29, delete lines 14 through 23 in their entirety;

On page 29, line 24, delete "(4)" and insert "(2)";

On page 30, line 5, delete "(5)" and insert "(3)";

On page 30, delete lines 11 through 16 and insert the following in lieu thereof:

"(4) **Use of Local District Capital Outlay Funds:** (a) 1. Notwithstanding KRS 157.420(4) and (6), a local district may submit a request to the Commissioner of Education to use capital outlay funds for maintenance expenditures or for the purchase of property insurance in fiscal year 2008-2009 and fiscal year 2009-2010 without forfeiture of the district's participation in the School Facilities Construction Commission Program. Maintenance requests may include other priorities that are not considered major renovations, such as repair, renovation, or system upgrades that are necessary to maintain the integrity of an existing school facility; and/or

2. A district may submit a request to the Commissioner of Education to use funds from the per pupil capital outlay allotment to purchase land for a new school or to modify an existing school if the project is included on the district facility plan for completion within eight years. The Commissioner may grant or deny the district's request at his or her discretion; and/or

3. A district which has experienced an increase in adjusted average daily attendance, as defined by administrative regulation, of 20 percent or more over a five year period may submit a request to the Commissioner of Education to use capital outlay funds for the operation of a new school for the first two years following its opening. The Commissioner may grant or deny the district's request at his or her discretion; and

(b) Notwithstanding KRS 157.615(1), capital outlay funds used for expenditures, in either fiscal year 2008-2009 or in fiscal year 2009-2010, other than those designated in KRS 157.420(4) and (5) shall be included in determining the amount of local revenue available for purposes of calculating unmet need for participation in the School Facilities Construction Commission funding. The capital outlay funds used for purposes under this paragraph shall continue to be included in the local revenue available from fiscal year to fiscal year."; and

On page 30, line 17, delete "(7)" and insert "(5)";

On page 31, line 7, delete "(8)" and insert "(6)";

On page 31, line 10, delete "(7)" and insert "(5)";

On page 51, line 15, delete "157.621(2) and (3) for local" and insert "157.621(1)(b)2..";

On page 51, delete lines 16 through 21 in their entirety;

On page 51, line 24, delete "following eligibility" and lines 25 through 27 in their entirety and insert "requirements of KRS 157.621(2)";

On page 52, delete lines 1 and 2 in their entirety;

On page 52, line 3, delete "in KRS 157.440(1)(b)";

On page 52, line 12, delete "following eligibility requirements: (a)" and lines 13 through 27 in their entirety and insert "requirements of KRS 157.621(3).";

On page 53, delete line 1;

On page 100, line 23, delete "59,089,800" and insert "59,466,800";

On page 102, line 2, delete "\$4,936,000" and insert "\$5,313,000";

On page 102, line 26, delete "The \$50,000,000" and insert "Included in the \$57,500,000";

On page 103, line 1, delete ", shall be used" and insert "is \$50,000,000";

On page 103, line 3, after "section" insert ", and \$7,500,000 for the University of Louisville to support translational research";

On page 103, after line 12, insert the following:

"(c) Translational research is research and related activities that have significant potential to address identified problems through the applied transfer of knowledge to improve the health and welfare of Kentuckians and by so doing increase the economic vitality of the Commonwealth. Notwithstanding KRS 164.7917(2), the University of Louisville shall utilize its Proof of Concept Grant Fund Review Process to identify the research projects qualified for investment of translational research funds and submit approved projects to the Council on Postsecondary Education. The Council on Postsecondary Education shall distribute funds appropriated for translational research in paragraph (a) of this subsection to the University of Louisville to support the approved projects. Notwithstanding KRS 164.7917(2), a translational research award under this subsection shall not be subject to a requirement for matching funds.";

On page 127, line 3, before the word "Heritage", insert "Research Capital Match Program Pool of the Research Challenge Trust Fund;";

On page 136, line 16, delete "157.621" and insert "157.621(1)(c)";

On page 144, line 14, delete "50,000,000" and insert "57,500,000" in lieu thereof;

On page 184, after line 27, insert:

<b>"025.</b> Construct Licking Valley Center Phase II - Maysville CTC Reauthorization Restricted Funds and \$1,500,000 Other Funds);	(\$3,459,000
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On page 196, line 5, delete "183,557,900" and insert "191,117,400";

On page 218, line 12, delete "\$5,157,000" and insert "\$6,535,000";

On page 219, line 14, delete ";";

On page 219, after line 14, insert the following:

" 12. Renovate Downtown Campus Phase II - Jefferson CTC Bond Funds	\$28,612,000
13. Construct Business Continuance Datacenter - Morehead State University Bond Funds	\$2,500,000;";

On page 223, line 9, delete "18,498,225" and insert "11,868,225 in fiscal year 2009-2010".

➔Section 2. 2008 Kentucky Acts Chapter 174, Section 2, is repealed and reenacted to read as follows:

The provisions of 2008 Regular Session HB 410/EN are amended as follows:

On page 9, line 1, delete "4,420,000" and insert "6,630,000";

Adjust subsequent subtotals and totals accordingly;

On page 9, line 2, delete "6,892,100" and insert "7,997,100";

On page 9, line 6, delete "9,554,000" and insert "6,239,000";

On page 9, line 8, delete "4,420,000" and insert "6,630,000";

On page 9, line 10, delete "46,642,800" and insert "46,256,050";

On page 9, line 19, delete "Water and Sewer Resources" and insert "Infrastructure for Economic";

On page 9, line 20, after "Counties.", insert on the next line:

**“(29) Infrastructure for Economic Development Fund for Coal-Producing Counties - 2008-2010:**

Notwithstanding KRS 42.4582 and 42.4585, the quarterly calculation and transfer of moneys from the General Fund to the Local Government Economic Development Fund shall be made only after each quarterly installment of the annual appropriation of \$1,105,000 in fiscal year 2009-2010 is appropriated to the Kentucky Infrastructure Authority budget unit, to provide General Fund debt service to support newly authorized bonds for the Infrastructure for Economic Development Fund for Coal-Producing Counties.”;

On page 10, line 9, delete "50,000,000" and insert "75,000,000";

On page 10, line 15, delete "100,000,000" and insert "150,000,000";

On page 47, line 23, delete "Scamatics" and insert "Schematics";

On page 59, line 8, delete "not";

On page 62, line 20, delete "Extra Curricular" and insert "Extracurricular";

On page 62, line 22, delete "Extra Curricular" and insert "Extracurricular";

On page 77, line 19, delete "7,119,000" and insert "4,909,000";

On page 77, line 20, delete "30,497,600" and insert "28,287,600";

On page 77, line 22, delete "4,420,000" and insert "6,630,000"; and

On page 77, line 24, delete "4,420,000" and insert "6,630,000".

➔Section 3. It is the intent of the General Assembly for this Act to reaffirm the passage of 2008 Regular Session HB 514/EN. As such, the General Assembly has repealed and reenacted 2008 Kentucky Acts Chapter 174.

➔Section 4. Sections 1 and 2 of this Act shall be retroactively applied to April 24, 2008.

➔Section 5. Whereas this Act repeals and reenacts 2008 Kentucky Acts Chapter 174, which amends the current state/executive branch budget, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon otherwise becoming law.

**Signed by the Governor March 24, 2009.**

## CHAPTER 88

### (HB 322)

AN ACT relating to school calendars and declaring an emergency.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. (1) (a) Whereas a large majority of counties have been identified by emergency declaration as federal disaster areas because of Tropical Depression Ike that occurred in September 2008, and the severe weather storm that occurred in January and February, 2009, that included ice, snow, and flooding, resulting in power failures, impassable roads, and communications failures; and whereas, it has been necessary to close schools for numerous days during these events; the commissioner of education, notwithstanding any other statute or administrative regulation to the contrary or any other provision of 2008 Ky. Acts ch. 127, may approve a request from a local board of education to waive the makeup of a maximum of ten (10) instructional days that a district missed because of these disasters.

(b) Notwithstanding any provision of this section to the contrary, the commissioner of education may approve a plan submitted by a local board of education that extends the instructional day by not less than thirty (30) minutes.

(2) The commissioner shall inform local boards of education of the procedures to be used when making a request under this section. After consideration of a district's request, the commissioner may approve the request.

(3) (a) A local board of education requesting relief under the provisions of this section shall submit an amended school calendar for the 2008-2009 school year to the commissioner of education no later than May 1, 2009. The amended calendar shall detail the makeup days to be used and shall include a request for consideration of disaster days as approved by the local board.

(b) The commissioner shall not approve a request for any disaster days unless the amended 2008-2009 school calendar shows that all makeup days included in the district's approved calendar for the 2008-2009 school year shall be used.

(c) The commissioner shall approve or deny a request for any disaster days within ten (10) calendar days of the original request.

(4) School district certified and classified personnel shall make up any days approved as disaster days by participating in instructional activities or professional development or by being assigned additional work responsibilities.

(5) (a) School district certified personnel employed full-time may use any unused emergency leave days, as identified in KRS 161.152, and any unused personal leave days, as identified in KRS 161.154, that may be provided by the district board of education to offset the make up days required in subsections (2) and (3) of this section if consistent with district policy.

(b) School district classified personnel employed full-time in the district may use any unused emergency leave days, as identified in KRS 161.152 that may be provided by the district board of education to offset the make up days required in subsections (2) and (3) of this section if consistent with district policy.

➔Section 2. The commissioner of education may approve a local board of education's request to exceed the five (5) instructional hours that do not have to be made up under 702 KAR 7:125, Section 3. when school days were shortened to address an emergency situation. The commissioner shall determine how much additional time does not have to be made up based on the extenuating circumstances in the district on case-by-case basis.

➔Section 3. Whereas school districts must adjust the school schedule for the remaining part of the school year, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

➔Section 4. KRS 157.360 is amended to read as follows:

- (1) In determining the cost of the program to support education excellence in Kentucky, the statewide guaranteed base funding level, as defined in KRS 157.320, shall be computed by dividing the amount appropriated for this purpose by the prior year's statewide average daily attendance.
- (2) Each district shall receive an amount equal to the base funding level for each pupil in average daily attendance in the district in the previous year. Each district's base funding level shall be adjusted by the following factors:
  - (a) The number of at-risk students in the district. At-risk students shall be identified as those approved for the free lunch program under state and federal guidelines. The number of at-risk students shall be multiplied by a factor to be established by the General Assembly. Funds generated under this paragraph may be used to pay for:
    1. Alternative programs for students who are at risk of dropping out of school before achieving a diploma; and
    2. A hazardous duty pay supplement as determined by the local board of education to the teachers who work in alternative programs with students who are violent or assaultive;
  - (b) The number and types of exceptional children in the district as defined by KRS 157.200. Specific weights for each category of exceptionality shall be used in the calculation of the add-on factor for exceptional children; and

- (c) Transportation costs. The per-pupil cost of transportation shall be calculated as provided by KRS 157.370. Districts which contract to furnish transportation to students attending nonpublic schools may adopt any payment formula which assures that no public school funds are used for the transportation of nonpublic students.
- (3) The program to support education excellence in Kentucky shall be fully implemented by the 1994-95 school year.
- (4) (a) Except for those schools which have implemented school-based decision making, the chief state school officer shall enforce maximum class sizes for every academic course requirement in all grades except in vocal and instrumental music, and physical education classes. Except as provided in subsection (5) of this section, the maximum number of pupils enrolled in a class shall be as follows:
  - 1. Twenty-four (24) in primary grades (kindergarten through third grade);
  - 2. Twenty-eight (28) in grade four (4);
  - 3. Twenty-nine (29) in grades five (5) and six (6);
  - 4. Thirty-one (31) in grades seven (7) to twelve (12).
- (b) Except for those schools which have implemented school-based decision making, class size loads for middle and secondary school classroom teachers shall not exceed the equivalent of one hundred fifty (150) pupil hours per day.
- (c) The chief state school officer, upon approval of the Kentucky Board of Education, shall adopt administrative regulations for enforcing this provision. These administrative regulations shall include procedures for a superintendent to request an exemption from the Kentucky Board of Education when unusual circumstances warrant an increased class size for an individual class. A request for an exemption shall include specific reasons for the increased class size with a plan for reducing the class size prior to the beginning of the next school year. A district shall not receive in any one (1) year exemptions for more classes than enroll twenty percent (20%) of the pupils in the primary grades and grades four (4) through eight (8).
- (d) In all schools the chief state school officer shall enforce the special education maximum class sizes set by administrative regulations adopted by the Kentucky Board of Education. A superintendent may request an exemption pursuant to paragraph (c) of this subsection. A local school council may request a waiver pursuant to KRS 156.160(2). An exemption or waiver shall not be granted if the increased class size will impede any exceptional child from achieving his individual education program in the least restrictive environment.
- (5) In grades four (4) through six (6) with combined grades, the maximum class size shall be the average daily attendance upon which funding is appropriated for the lowest assigned grade in the class. There shall be no exceptions to the maximum class size for combined classes. In combined classes other than the primary grades, no ungraded students shall be placed in a combined class with graded students. In addition, there shall be no more than two (2) consecutive grade levels combined in any one (1) class in grades four (4) through six (6). However, this shall not apply to schools which have implemented school-based decision making.
- (6) If a local school district, through its admission and release committee, determines that an appropriate program in the least restrictive environment for a particular child with a disability includes either part-time or full-time enrollment with a private school or agency within the state or a public or private agency in another state, the school district shall count as average daily attendance in a public school the time that the child is in attendance at the school or agency, contingent upon approval by the chief state school officer.
- (7) Pupils attending a center for child learning and study established under an agreement pursuant to KRS 65.210 to 65.300 shall, for the purpose of calculating average daily attendance, be considered as in attendance in the school district in which the child legally resides and which is party to the agreement. For purposes of subsection (1) of this section, teachers who are actually employees of the joint or cooperative action shall be considered as employees of each school district which is a party to the agreement.
- (8) Program funding shall be increased when the average daily attendance in any district for the first two (2) months of the current school year is greater than the average daily attendance of the district for the first two (2) months of the previous school year. The program funds allotted the district shall be increased by the percent of

increase. The average daily attendance in kindergarten is the kindergarten full-time equivalent pupils in average daily attendance.

- (9) If the average daily attendance for the current school year in any district decreases by ten percent (10%) or more than the average daily attendance for the previous school year, the average daily attendance for purposes of calculating program funding for the next school year shall be increased by an amount equal to two-thirds ( $\frac{2}{3}$ ) of the decrease in average daily attendance. If the average daily attendance remains the same or decreases in the succeeding school year, the average daily attendance for purposes of calculating program funding for the following school year shall be increased by an amount equal to one-third ( $\frac{1}{3}$ ) of the decrease for the first year of the decline.
- (10) If the percentage of attendance of any school district shall have been reduced more than two percent (2%) during the previous school year, the program funding allotted the district for the current school year shall be increased by the difference in the percentage of attendance for the two (2) years immediately prior to the current school year less two percent (2%).
- (11)
  - (a) Instructional salaries for vocational agriculture classes shall be for twelve (12) months per year. Vocational agriculture teachers shall be responsible for the following program of instruction during the time period beyond the regular school term established by the local board of education: supervision and instruction of students in agriculture experience programs; group and individual instruction of farmers and agribusinessmen; supervision of student members of agricultural organizations who are involved in leadership training or other activity required by state or federal law; or any program of vocational agriculture established by the Division of Career and Technical Education in the Department of Education. During extended employment, no vocational agriculture teacher shall receive salary on a day that the teacher is scheduled to attend an institution of higher education class which could be credited toward meeting any certification requirement.
  - (b) Each teacher of agriculture employed shall submit an annual plan for summer program to the local school superintendent for approval. The summer plan shall include a list of tasks to be performed, purposes for each task, and time to be spent on each task. Approval by the local school superintendent shall be in compliance with the guidelines developed by the State Department of Education. The supervision and accountability of teachers of vocational agriculture's summer programs shall be the responsibility of the local school superintendent. The local school superintendent shall submit to the chief state school officer a completed report of summer tasks for each vocational agriculture teacher. Twenty percent (20%) of the approved vocational agriculture programs shall be audited annually by the State Department of Education to determine that the summer plan has been properly executed.
- (12)
  - (a) In allotting program funds for home and hospital instruction, statewide guaranteed base funding, excluding the capital outlay, shall be allotted for each child in average daily attendance in the prior school year who has been properly identified according to Kentucky Board of Education administrative regulations. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported monthly on forms provided by the Department of Education; and
  - (b) Pursuant to administrative regulations of the Kentucky Board of Education, local school districts shall be reimbursed for home and hospital instruction for pupils unable to attend regular school sessions because of short term health impairments. A reimbursement formula shall be established by administrative regulations to include such factors as a reasonable per hour, per child allotment for teacher instructional time, with a maximum number of funded hours per week, a reasonable allotment for teaching supplies and equipment, and a reasonable allotment for travel expenses to and from instructional assignments, but the formula shall not include an allotment for capital outlay. Attendance shall be calculated pursuant to KRS 157.270 and shall be reported annually on forms provided by the Department of Education.
- (13) Except for those schools which have implemented school-based decision making and the school council has voted to waive this subsection, kindergarten aides shall be provided for each twenty-four (24) full-time equivalent kindergarten students enrolled.
- (14) Effective July 1, 2001, there shall be no deduction applied against the base funding level for any pupil in average daily attendance who spends a portion of his or her school day in a program at a state-operated career and technical education or vocational facility.

- (15) *Notwithstanding any other statute or budget of the Commonwealth language to the contrary, time missed due to shortening days for emergencies may be made up by lengthening school days in the school calendar without any loss of funds under the program to support education excellence in Kentucky.*

**Signed by the Governor March 24, 2009.**

## CHAPTER 89

### (HB 333)

AN ACT relating to the American Medical Association's "Guides to the Evaluation of Permanent Impairment" and declaring an emergency.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. (1) The provisions of KRS 67A.460, 342.0011, 342.315, 342.316, 342.730, and 342.7305 requiring the usage of the latest edition of "Guides to the Evaluation of Permanent Impairment," published by the American Medical Association, to the contrary notwithstanding, until the normal effective date for legislation enacted during the 2010 Regular Session of the Kentucky General Assembly, the fifth edition of "Guides to the Evaluation of Permanent Impairment," published by the American Medical Association, shall be utilized in lieu of any later edition of that work for the purposes of those statutes.

(2) The executive director of the Office of Workers' Claims in the Department of Labor shall study the feasibility and advisability of adopting the sixth edition of "Guides to the Evaluation of Permanent Impairment," published by the American Medical Association, or of retaining the usage of the fifth edition of that publication. In conducting the study, the executive director shall seek the input of groups representing labor, industry, commerce, and the medical and legal professions. The executive director shall update and consult with the Interim Joint Committee on Labor and Industry on the content and progress of the study when requested to do so by that committee, and shall consider any recommendations of that committee or its members relating to the study. The executive director shall submit to the Legislative Research Commission a report of the executive director's findings by January 4, 2010.

(3) If, during the period of time between the effective date of this Act and the effective date of legislation enacted during the 2010 Regular Session of the Kentucky General Assembly, the executive director of the Office of Workers' Claims makes a written finding that the welfare of Kentucky's workers would be materially enhanced by the adoption of the sixth edition of "Guides to the Evaluation of Permanent Impairment," published by the American Medical Association, the executive director may by administrative regulation require the utilization of the sixth edition of that publication, notwithstanding the provisions of subsection (1) of this section. If the executive director utilizes the authority granted by this subsection, the executive director shall, contemporaneous with the promulgation of the administrative regulation, submit to the Legislative Research Commission a written report detailing the factual and policy basis for the executive director's action.

➔Section 2. Whereas the protection of the welfare of Kentucky's working citizens demands the careful and considered action of the government of the Commonwealth and its agencies and instrumentalities, and the impending automatic adoption of differing standards for permanent impairment without due consideration may lessen that protection, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by the Governor March 24, 2009.**

## CHAPTER 90

### (HB 383)

AN ACT relating to interscholastic athletics and declaring an emergency.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. (1) The Kentucky High School Athletics Association, with assistance from the Kentucky Department of Education, shall staff and coordinate a study of sports safety to be completed no later than October 1, 2009.

(2) The study shall include a review of:

- (a) The requirements and their adequacy for sports safety education in public middle and secondary schools, including heat-related and air quality issues, chronic and overuse injuries, and other risk factors;
  - (b) Required training programs for secondary school coaches, to include how training is certified to demonstrate knowledge and competencies of participants;
  - (c) Required first aid and medical assistance protocols or standards of care for students suffering minor and major injuries during practices and competitions;
  - (d) Data regarding sports injuries, by sport, in Kentucky and an examination of data reporting requirements and responsibilities for oversight when injuries occur;
  - (e) Education for high school coaches, volunteers, parents, and student athletes relating to nutrition, weight training, and the dangers of steroids and other illegal supplements;
  - (f) The availability of sports injury prevention programs and other safety resources; and
  - (g) Other information as deemed appropriate by the study group to fully examine the status of sports safety in Kentucky for high school students.
- (3) The Association shall have a formal work group composed of:
- (a) At least two (2) members of the Kentucky Board of Education, selected by the board chairman;
  - (b) At least two (2) representatives from the Kentucky Department of Education, selected by the commissioner of education;
  - (c) At least two (2) high school coaches selected by the Chair of the Board of Control;
  - (d) At least two (2) members from the Kentucky Medical Association, appointed by the executive director;
  - (e) At least three (3) certified sports trainers; and
  - (f) Others as deemed appropriate by the commissioner of education and the executive director of the Kentucky High School Athletics Association.
- (4) The commissioner of education or designee and the executive director of the Kentucky High School Athletics Association shall identify the work group members within thirty (30) days of the effective date of this Act.
- (5) The Association shall submit a written report to include findings and recommendations to the Interim Joint Committee on Education by October 30, 2009. The report shall include but not be limited to recommendations to improve the safety of students participating in high school athletics and any legislation that might be necessary to implement the recommendations.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Board of Education or organization or agency designated by the board to manage interscholastic athletics shall require each high school coach to complete a sports safety course consisting of training on how to prevent common injuries. The content of the course shall include but not be limited to emergency planning, heat and cold illnesses, emergency recognition, head injuries, neck injuries, facial injuries, and principles of first aid. The course shall also be focused on safety education and shall not include coaching principles.*
- (2) *The state board or its agency shall:*
  - (a) *Establish a minimum timeline for a coach to complete the course;*
  - (b) *Approve providers of a sports safety course;*
  - (c) *Be responsible for ensuring that an approved course is taught by qualified professionals who shall either be certified athletic trainers, registered nurses, physicians, or physician's assistants licensed to practice in Kentucky; and*
  - (d) *Establish the minimum qualifying score for successful course completion.*
- (3) *A course shall be reviewed for updates at least once every thirty (30) months and revised if needed.*
- (4) *A course shall be able to be completed through hands-on or on-line teaching methods in ten (10) clock hours or less.*

- (5) (a) *A course shall include an end-of-course examination with a minimum qualifying score for successful course completion established by the board or its agency.*
- (b) *All coaches shall be required to take the end-of-course examination and shall obtain at least the minimum qualifying score.*
- (6) *Beginning with the 2009-2010 school year, at least one (1) person who has completed the course shall be at every high school athletic practice and competition.*

➔Section 3. Whereas there is no existing requirement for a medical professional to be on-site during high school athletic events and the safety of student athletes is sometimes compromised, an emergency is declared to exist and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by the Governor March 24, 2009.**

## CHAPTER 91

### (HB 331)

AN ACT relating to agisters.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 376.400 is amended to read as follows:

- (1) Any owner or keeper of a livery stable *or other business providing for the care of animals*, and a person feeding, ~~or~~ grazing, *or caring for any animal*~~[cattle]~~ for compensation, shall, *except as provided in subsection (2) of this section*, have a lien for one (1) year upon the *animal*~~[cattle]~~ placed in the stable, *kennel, or similar facility*, or put out to be fed or grazed by the owner, for his *or her* reasonable charges for keeping, caring for, feeding, and grazing the *animal*~~[cattle]~~. The lien shall attach whether the *animal is*~~[cattle are]~~ merely temporarily lodged, fed, grazed, and cared for, or are placed at the stable or other place or pasture for regular board. The lien shall take priority over a lien created pursuant to KRS 376.420(1).
- (2) *Any person who has agreed to provide feed or care for an animal for compensation may, in lieu of the lien provided for in subsection (1) of this section, cause the animal to be sold if:*
- (a) *The owner of the animal is at least forty-five (45) days in arrears on his or her payment for the care and feeding of the animal and the animal is in the possession of the person or business providing for the care of the animal;*
- (b) *The proposed sale is published in one or more newspapers and qualified pursuant to KRS Chapter 424, with a publication area in the locale where the person providing care for the animal is located and the locale where the owner of the animal was last known to reside; and*
- (c) *Written notice of the sale is sent by certified mail, return receipt requested, or registered mail, to the owner of the animal, addressed to such person at his or her last known address, and to all lien holders of record with the Kentucky Secretary of State and the local county clerk's office, at least ten (10) days before the sale is conducted. The written notice shall include:*
1. *The amount due the person or business providing care for the animal;*
  2. *The date, time, and location of the sale; and*
  3. *A statement that the sale proceeds shall be disbursed as provided in subsection (3) of this section.*
- (3) *If a sale is conducted as provided in subsection (2) of this section, the proceeds of the sale shall be disbursed in the following order:*
- (a) *Payment for costs associated with the sale;*
- (b) *Payment of amounts due to the person or business providing for the care and feeding of the animal;*
- (c) *Payment to lien holders and creditors pursuant to a court order; and*

- (d) *The remainder, if any, held for the owner for a period of twelve (12) months and, if not claimed at that time, then paid into the district school fund.*

**Signed by the Governor March 24, 2009.**

## CHAPTER 92

### (HB 429)

AN ACT relating to sales and use tax.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 139.570 is repealed and reenacted to read as follows:

- (1) (a) For reimbursement of the cost of collecting and remitting the tax, the seller shall deduct on each return one and three-quarters percent (1.75%) of the first one thousand dollars (\$1,000) of tax due and one percent (1%) of the tax due in excess of one thousand dollars (\$1,000), provided the amount due is not delinquent at the time of payment.
- (b) The total reimbursement allowed for each seller in any reporting period shall not exceed one thousand five hundred dollars (\$1,500).
- (2) Notwithstanding subsection (1) of this section, the rate of compensation for taxes collected or returns filed by certified service providers and other model sellers participating in the agreement as defined in KRS 139.781 shall be determined according to the terms of the agreement as provided in KRS 139.789(7).

➔Section 2. The intent of the General Assembly in repealing and reenacting KRS 139.570 in Section 1 of this Act is to affirm the amendments made to KRS 139.570 in 2008 Ky. Acts ch. 39. Section 1 of this Act shall apply retroactively for the period beginning July 1, 2003, to June 30, 2004, and for the period beginning July 1, 2005, to June 30, 2008.

➔Section 3. To the extent that any provision included in Section 1 of this Act is considered new language, the provisions of KRS 446.145 requiring new language to be underlined are notwithstanding.

**Signed by the Governor March 24, 2009.**

## CHAPTER 93

### (HB 480)

AN ACT relating to loan forgiveness and declaring an emergency.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 164.769 is amended to read as follows:

- (1) It is the intent of the General Assembly to establish a teacher scholarship program to assist highly qualified individuals to become certified Kentucky teachers and render teaching service in Kentucky schools.
- (2) For purposes of this section, the terms listed below shall have the following meanings:
  - (a) "Critical shortage area" means an understaffing of teachers in particular subject matters at the secondary level, in grade levels, or in geographic locations at the elementary and secondary level, as determined by the commissioner of education in consultation with the authority. The commissioner and the authority may use any source considered reliable including, but not limited to, local education agencies to identify the critical shortage areas.
  - (b) "Eligible program of study" means an undergraduate or graduate program of study which is preparatory to initial teacher certification.
  - (c) "Expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying methodology set forth in 20 U.S.C. sec. 1087 kk to 1087 vv.

- (d) "Participating institution" means an institution of higher education located in Kentucky which offers an eligible program of study and has in force an agreement with the authority providing for administration of this program.
  - (e) "Qualified teaching service" means teaching the major portion of each school day for at least seventy (70) days each semester in a public school of the Commonwealth or a private school certified pursuant to KRS 156.160(3), except that an individual having a disability defined by Title II of the Americans with Disabilities Act (42 U.S.C. secs. 12131 et seq.), whose disability, certified by a licensed physician, prevents that individual from teaching a major portion of each school day, shall be deemed to perform qualified teaching service by teaching the maximum time permitted by the attending physician.
  - (f) "Semester" means a period of about eighteen (18) weeks, which usually makes up one-half (1/2) of a school year or one-half (1/2) of a participating institution's academic year.
  - (g) "Summer term" means an academic period consisting of one (1) or more sessions of instruction between a spring and a fall semester.
- (3) The authority may, to the extent of appropriations and other funds available to it pursuant to subsection (9) of this section, award teacher scholarships to persons eligible under subsection (4) of this section, who initially demonstrate financial need in accordance with standards and criteria established by the authority or received teacher scholarships pursuant to this section prior to July 1, 1996. Each teacher scholarship shall be evidenced by a promissory note that requires repayment or cancellation pursuant to subsection (6) of this section.
  - (4) Kentucky residents who are United States citizens and enrolled or accepted for enrollment in an eligible program of study on a full-time basis at a participating institution shall be eligible to apply for and be awarded teacher scholarships. Teacher scholarships shall first be awarded to highly qualified eligible students who meet standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program at a participating institution or who received teacher scholarships pursuant to this section prior to July 1, 1996. If funds are not depleted after awarding teacher scholarships to students who meet the preceding criteria, then awards shall be made to any otherwise eligible students seeking admission to a teacher education program.
  - (5) The authority shall establish, by administrative regulation, the maximum amount of scholarship to be awarded for each semester and summer term under this section, and shall prorate the amount awarded to any student enrolled less than full-time in accordance with paragraph (6)(a) of this section. The aggregate amount of scholarships awarded to an individual shall not exceed twelve thousand five hundred dollars (\$12,500) for undergraduate students and seven thousand five hundred dollars (\$7,500) for postbaccalaureate students, except that the aggregate amount of scholarships awarded to an individual who received teacher scholarships pursuant to this section prior to July 1, 1996, including any amount received pursuant to KRS 156.611, 156.613, 164.768, or 164.770, shall not exceed twenty thousand dollars (\$20,000), and the amount of each scholarship to be awarded shall not exceed the applicant's total cost of education minus other financial assistance received or expected to be received by the applicant during the academic period.
  - (6)
    - (a) The authority shall disburse teacher scholarships to eligible students who agree to render qualified teaching service as certified teachers, and are unconditionally admitted and enrolled in an eligible program of study on a full-time basis, except that disbursements may be made to otherwise eligible students enrolled less than full-time in the semester or summer term in which the eligible program of study will be completed or otherwise eligible students having a disability defined by Title II of the Americans with Disabilities Act (42 U.S.C. secs. 12131 et seq.), who have been certified by a licensed physician to be unable to attend the eligible program of study full-time because of the disability. Teacher scholarships shall be disbursed to eligible students who received teacher scholarships pursuant to this section for recertification in a critical shortage area prior to July 1, 1996, who are enrolled in and continuing toward completion of their program of study, and who agree to render qualified teaching service as certified teachers.
    - (b) A teacher scholarship shall not be awarded or a promissory note cancellation shall not be granted to any person who is in default on any obligation to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 until financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the authority for cause.

- (c) Recipients shall render one (1) semester of qualified teaching service for each semester or summer term of scholarship received, except that recipients who teach in a critical shortage area designated by the authority shall render one (1) semester of qualified teaching service as repayment for two (2) semesters or summer terms of scholarships received. Upon completion of each semester of qualified teacher service, the authority shall cancel the appropriate number of promissory notes.
  - (d) If the recipient of a teacher scholarship fails to complete an eligible program of study at a participating institution or fails to render qualified teaching service in any semester following certification or recertification, unless the failure is temporarily waived for cause by the authority, the recipient shall immediately become liable to the authority for repayment of the sum of all outstanding promissory notes and accrued interest. Persons liable for repayment of scholarships under this paragraph shall be liable for interest accruing from the dates on which the teacher scholarships were disbursed.
  - (e) Recipients who have outstanding loans or scholarships under KRS 156.611, 156.613, 164.768, or 164.770 respectively, and who render qualified teaching service, shall have their notes canceled in accordance with subsection (6)(c) of this section.
  - (f) The authority shall establish, by administrative regulation, the terms and conditions for the award, cancellation, and repayment of teacher scholarships including, but not limited to, the selection criteria, eligibility for renewal awards, amount of scholarship payments, deferments, the rate of repayment, and the interest rate thereon.
  - (g) Notwithstanding any other statute to the contrary, the maximum interest rate applicable to repayment of a promissory note under this section shall be twelve percent (12%) per annum, except that if a judgment is rendered to recover payment, the judgment shall bear interest at the rate of five percent (5%) greater than the rate actually charged on the promissory note.
- (7) A repayment obligation imposed by this section shall not be voidable by reason of the age of the recipient at the time of receiving the teacher scholarship.
  - (8) Failure to meet repayment obligations imposed by this section shall be cause for the revocation of a person's teaching certificate, subject to the procedures set forth in KRS 161.120.
  - (9) All moneys repaid to the authority under this section shall be added to the appropriations made for purposes of this section, and the funds and unobligated appropriations shall not lapse.
  - (10) The authority may execute appropriate contracts and promissory notes for administering this section.
  - (11) *Notwithstanding any other statute to the contrary*, if available funds are insufficient for all requested scholarships for eligible applicants during any fiscal year, the authority shall give priority consideration to eligible applicants who previously received teacher scholarships *and to loan forgiveness for teachers who have outstanding loan balance eligibility for Best in Class loans issued prior to June 30, 2008*. If funds are insufficient to make all requested renewal scholarships to eligible applicants, the authority shall reduce all scholarship awards to the extent necessary to provide scholarships to all qualified renewal applicants. If, after awarding all eligible renewal applicants, funds are not depleted, initial applications shall be ranked according to regulatory selection criteria, which may include expected family contribution and application date, and awards shall be made to highly qualified applicants until funds are depleted.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *For purposes of this section, the terms "Best in Class for Teachers," "Best in Care for Nurses," and "Best in Law for Public Service Attorneys" means the loan forgiveness programs established by the Higher Education Assistance Authority under its authority in KRS 164.744(2) and 164.748(7). The term "eligible program participant" means an individual who has an outstanding loan balance on a loan related to these loan forgiveness programs that were issued prior to June 30, 2008.*
- (2) *In the event that there are insufficient funds available from any source that can be used by the Kentucky Higher Education Assistance Authority to provide loan forgiveness for an eligible program participant, the authority shall negotiate an extended repayment schedule upon request by an eligible participant. The negotiated schedule shall be in compliance with federal loan requirements. Notwithstanding any other statute to the contrary, an eligible program participant in this repayment schedule shall not forfeit eligibility for other loans or scholarships that become available.*

➔Section 3. The Governor is urged to encourage our Congressional delegation to provide federal American Recovery and Reinvestment Act funds or other federal funds to enable the Kentucky Higher Education Assistance Authority to honor its commitment to provide loan forgiveness for eligible program participants.

➔Section 4. Whereas the Kentucky Higher Education Assistance Authority created the Best in Class for Teachers, Best in Care for Nurses, and Best in Law for Public Service Attorneys loan forgiveness programs to recruit individuals into professions experiencing shortages throughout the Commonwealth and whereas individuals who were accepted for related loans prior to June 30, 2008 have honored their commitments in a good faith expectation of loan forgiveness, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Signed by the Governor March 24, 2009.**

## CHAPTER 94

### (HB 536)

AN ACT relating to transportation, making an appropriation therefor, and declaring an emergency.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 177.317 is amended to read as follows:

The Transportation Cabinet shall allow partial control of access on the Hal Rogers Parkway, ***between the junction with KY 192 and the junction with KY 80***, and establish minimum spacing requirements and the manner in which the access is to be provided. Minimum access spacing under this section shall be no less than one thousand two hundred (1,200) feet.

➔Section 2. 2008 Kentucky Acts Chapter 127, Part I, Operating Budget; L. Transportation Cabinet; 3. Debt Service, at page 538, is amended to read as follows:

### 3. DEBT SERVICE

	2008-09	2009-10
Road Fund	148,513,000	<del>136,599,000</del> <b>154,278,000</b>

(1) **Resource Recovery Road Lease-Rental Payments:** Included in the above Road Fund appropriation is \$9,086,400 in fiscal year 2008-2009 for Resource Recovery Road lease-rental payments. The Secretary of the Transportation Cabinet shall use Road Fund resources to meet the lease-rental payments to the Kentucky Turnpike Authority for Resource Recovery Road projects in the amount certified by the Transportation Cabinet, pursuant to KRS 143.090. However, if Road Fund resources are not sufficient to meet lease-rental payments, the additional amount required to meet the obligation shall be transferred from the proceeds of the tax levied on the severance or processing of coal by KRS 143.020.

(2) **Economic Development Road Lease-Rental Payments:** Included in the above Road Fund appropriation is \$139,426,600 in fiscal year 2008-2009 and \$134,389,000 in fiscal year 2009-2010 for Economic Development Road lease-rental payments relating to projects financed by Economic Development Road Revenue Bonds previously authorized by the General Assembly and issued by the Kentucky Turnpike Authority.

(3) **Economic Development Road Bond Debt Service:** Included in the above Road Fund appropriation is \$2,210,000 in fiscal year 2009-2010 for Economic Development Road lease-rental payments to the Kentucky Turnpike Authority relating to projects financed by \$50,000,000 in Economic Development Road Revenue Bonds.

(4) **Excess Lease-Rental Payments:** Any moneys not required to meet lease-rental payments or to meet the administrative costs of the Kentucky Turnpike Authority shall be transferred to the State Construction Account.

(5) **Debt Payment Acceleration Fund Account:** Notwithstanding KRS 175.505, no portion of the revenues to the state Road Fund provided by the adjustments in KRS 138.220(2), excluding KRS 177.320 and 177.365, shall accrue to the Debt Payment Acceleration Fund account during the 2008-2010 fiscal biennium.

(6) ***Economic Development Road Bond Debt Service: Included in the above Road Fund appropriation is \$17,679,000 in fiscal year 2009-2010 for Economic Development Road lease-rental payments to the Kentucky***

**Turnpike Authority relating to projects financed by \$400,000,000 in Economic Development Road Revenue Bonds.**

➔Section 3. 2008 Kentucky Acts Chapter 127, Part I, Operating Budget; L. Transportation Cabinet; 4. Highways, at pages 538 to 541, as amended by 2008 Kentucky Acts Chapter 123 is further amended to read as follows:

**4. HIGHWAYS**

	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>
General Fund-0-	-0-	442,000	
Restricted Funds	37,960,400	310,076,700	80,181,800
Federal Funds	4,216,800	686,029,100	720,009,500
Road Fund	98,100	680,624,200	<del>737,488,500</del> <del>755,167,500</del>
Highway Bond	-0-	<del>450,000,000</del> <del>50,000,000</del>	-0-
TOTAL	42,275,300	<del>2,126,730,000</del> <del>1,726,730,000</del>	
	<del>1,538,121,800</del> <del>1,555,800,800</del>		

(1) **Debt Service:** Included in the above Federal Funds appropriation is \$44,323,900 in fiscal year 2008-2009 and \$43,901,500 in fiscal year 2009-2010 for debt service on Grant Anticipation Revenue Vehicle (GARVEE) Bonds previously appropriated by the General Assembly.

(2) **State Supported Construction Programs:** Included in the above Road Fund appropriation is \$289,434,000 in fiscal year 2008-2009 and ~~\$316,679,400~~~~\$334,358,400~~ in fiscal year 2009-2010 for the State Supported Construction Program.

(3) **State Resurfacing Program:** Included in the State Supported Construction Program in subsection (2) of this section is \$97,000,000 in fiscal year 2008-2009 and \$107,000,000 in fiscal year 2009-2010 from the Road Fund for the State Resurfacing Program.

(4) **Biennial Highway Construction Program:** Included in the State Supported Construction Program in subsection (2) of this section is \$161,434,000 in fiscal year 2008-2009 and ~~\$178,679,400~~~~\$196,358,400~~ in fiscal year 2009-2010 from the Road Fund for state construction projects in the fiscal biennium 2008-2010 Biennial Highway Construction Program.

(5) **Highway Construction Contingency Account:** Included in the State Supported Construction Program in subsection (2) of this section is \$31,000,000 in fiscal year 2008-2009 and \$31,000,000 in fiscal year 2009-2010 for the Highway Construction Contingency Account. The Transportation Cabinet may deposit \$4,000,000 from the Highway Construction Contingency Account in each fiscal year to the Industrial Road Access Account within the Transportation Cabinet. The Industrial Road Access Account funds are designated to be used solely by the Secretary of the Economic Development Cabinet. These funds may be expended, encumbered, or committed only upon the direction of the Secretary of the Economic Development Cabinet to the Secretary of the Transportation Cabinet. The Secretary of the Economic Development Cabinet may request from the Secretary of the Transportation Cabinet additional funds to be deposited to the Industrial Road Access Account if the funds are necessary to meet specific economic development opportunities in a local community. Notwithstanding KRS 45.229, any funds not expended from the Industrial Road Access Account prior to June 30, 2009, shall not lapse to the State Highway Construction Program, but shall remain in the Industrial Road Access Account and carry forward into fiscal year 2009-2010. Included in the above Road Fund appropriation is \$98,000 in fiscal year 2008-2009 for use by Mammoth Caves National Park to provide a 20 percent state-funded match for federal funds designated for planning and for design phases for dredging and reconstruction and improvements to the Green River Ferry loading ramps for year-round operation of the ferry.

(6) **2008-2010 Biennial Highway Construction Plan:** Projects in the enacted 2006-2008 Biennial Highway Construction Plan are authorized to continue their current authorization into the 2008-2010 fiscal biennium.

(7) **Kentucky Transportation Center:** Notwithstanding KRS 177.320(4), included in the above Road Fund appropriation is \$290,000 in fiscal year 2008-2009 and \$290,000 in fiscal year 2009-2010 for the Kentucky Transportation Center.

**(8) New Highway Equipment Purchases:** Notwithstanding KRS 48.710(3), included in the above Restricted Funds appropriation is \$1,500,000 in fiscal year 2008-2009 and \$1,500,000 in fiscal year 2009-2010 from the sale of surplus equipment to purchase new highway equipment.

**(9) State Match Provisions:** The Transportation Cabinet is authorized to utilize state construction moneys or Toll Credits to match federal highway moneys.

**(10) Federal Aid Highway Funds:** If additional federal highway moneys are made available to Kentucky by the United States Congress, the funds shall be used according to the following priority: (a) Any demonstration-specific or project-specific money shall be used on the project identified; (b) All projects identified for federal funding in the fiscal biennium 2008-2010 Biennial Highway Construction Plan shall be given first priority; and (c) All other funds shall be used to ensure that projects in the fiscal biennium 2008-2010 Biennial Highway Construction Plan are funded.

**(11) Road Fund Cash Management:** The Secretary of the Transportation Cabinet is authorized to continue the Cash Management Plan to address the policy of the General Assembly to expeditiously initiate and complete projects in the fiscal biennium 2008-2010 Biennial Highway Construction Plan. Notwithstanding KRS Chapter 45, specifically including KRS 45.242 and 45.244, the Secretary may concurrently advance projects in the Biennial Highway Construction Plan by employing management techniques that maximize the Cabinet's ability to contract for and effectively administer the project work. Under the approved Cash Management Plan, the Secretary is directed to continuously ensure that the unspent project and Road Fund balances available to the Transportation Cabinet are sufficient to meet expenditures consistent with appropriations provided.

**(12) Carry Forward of Appropriation Balances:** Notwithstanding KRS 45.229, unexpended Road Fund appropriations in the Highways budget unit for the Construction program, the Maintenance program, and the Research program in fiscal year 2007-2008 and in fiscal year 2008-2009 shall not lapse but shall carry forward. Unexpended Federal Funds and Restricted Funds appropriations in the Highways budget unit for the Construction program, the Maintenance program, and the Research program in fiscal year 2007-2008 and in fiscal year 2008-2009, up to the amount of ending cash balances and grant balances shall not lapse but shall carry forward.

**(13) Kentucky Pride Program Report:** The Environmental and Public Protection Cabinet shall provide to the Interim Joint Committee on Appropriations and Revenue and the Interim Joint Committee on Transportation a program and financial status report of all expenditures related to the Kentucky Pride Fund. The status report shall be provided to the Interim Joint Committee on Appropriations and Revenue and the Interim Joint Committee on Transportation no later than October 1 of each year.

**(14) Miscellaneous Road Fund Projects:** (a) The Transportation Cabinet may undertake the following miscellaneous road projects using the Highway Construction Contingency appropriation contained therein:

1. Fayette County Traffic Control Device: Install a traffic light at the intersection of Georgetown Road and Spurr Road for \$50,000 from Road Fund resources in fiscal year 2008-2009;
2. Fayette County Traffic Control Device: Install a left turn signal at the intersection of Russell Cave Road and Asbury Lane for \$6,000 from Road Fund resources in fiscal year 2008-2009;
3. Fayette County Traffic Control Device: Install a left turn signal at the intersection of Broadway and Third Street for \$6,000 from Road Fund resources in fiscal year 2008-2009;
4. Jefferson County Traffic Control Device: Install a left turn signal on both sides of the traffic control signal at the intersection of Eastern Parkway and Bardstown Road for \$12,000 from Road Fund resources in fiscal year 2008-2009;
5. Jefferson County Traffic Control Device: Install a right turn lane at Terry Road and Greenwood Road for \$75,000 from Road Fund resources in fiscal year 2008-2009;
6. Jefferson County Traffic Control Device: Install a left turn lane at St. Andrews Church Road and St. Anthony Road for \$150,000 from Road Fund resources in fiscal year 2008-2009;
7. Jefferson County Railroad Crossing: Reimburse \$80,000 to Louisville Metro Government, from Road Fund resources in fiscal year 2008-2009, for improvements to the Norfolk Southern Railroad crossing on Breckenridge Lane near the intersection of Breckenridge Lane and Six Mile Lane. The improvements shall include the rehabilitation and beautification of all sidewalks, drainage, landscaping, replacement or refurbishing of handrails, curbs, and retaining walls;

8. **Kenton County Traffic Control Device:** Install a traffic light at the intersection of Adela Street and Oak Street in Ludlow for \$22,000 from Road Fund resources in fiscal year 2008-2009;

9. **Kenton County Sidewalks:** Construct sidewalks on the northwest side of Adela Street from the Ludlow Independent School District to City Park in Ludlow for \$50,000 from Road Fund resources in fiscal year 2008-2009;

10. **Kenton County Sidewalk and Brick Repair:** Provide for transportation enhancement and beautification by repairing or replacing the historic brick and sidewalk located in the 500 block of Linden Street from Adela Street to Helen Street for \$100,000 from Road Fund resources in fiscal year 2008-2009; and

11. **Clark County Traffic Control Device:** Install a four-way traffic signal at the intersection of KY 1958 and KY 1960.

(b) The Transportation Cabinet shall follow the original plans for Scott County Project Number 7-102.10 as identified in the 2008-2014 Highway Road Plan. The Georgetown Northwest Bypass shall extend directly northward from the existing US 60/US 460 bypass intersection before proceeding to the existing KY 32. With the safety and protection of school children being of the utmost concern to the citizens of the Commonwealth, the Transportation Cabinet shall require the Georgetown Northwest Bypass project to provide adequate ingress to and egress from Western Elementary School.

**(15) Wetland Restoration Debt Service:** Included in the above appropriation is \$442,000 in fiscal year 2009-2010 for new debt service to support new bonds as set forth in Part II, Capital Projects Budget, of this Act.

**(16) Innovative Financing:** The Secretary of the Transportation Cabinet, or his or her designee, shall be authorized to update the initial financial plan utilizing toll revenues as an available funding source for the Louisville-Southern Indiana Ohio River Bridges Project.

**(17) Interlocal Cooperative Agreement:** Any local government may be permitted to enter into an interlocal cooperative agreement with the Transportation Cabinet to maintain traffic control devices on state-maintained roads within the local government's jurisdiction and shall be reimbursed by the Transportation Cabinet for the contracted cost of such maintenance. The agreement may permit local governments to make temporary repairs to state-maintained road surfaces within the local government's jurisdiction and shall be reimbursed by the Transportation Cabinet for the contracted cost of the temporary repairs. The Transportation Cabinet shall report all interlocal cooperative agreements entered into under this subsection to the Interim Joint Committee on Transportation within seven days of the agreement being finalized. The report shall include the local government requesting the assistance from the Cabinet, the scope and estimated cost of the service or repair, and the reasons for the necessity of the agreement.

**(18) Grant Anticipation Revenue Vehicle (GARVEE) Bonds:** Included in the above Restricted Funds appropriation is \$231,000,000 in fiscal year 2008-2009 for GARVEE Bond Funds to be issued for the Louisville-Southern Indiana Ohio River Bridges Project. Federal funds made available as a result of the issuance of bonds authorized herein, shall not be expended unless specifically appropriated and identified by the General Assembly.

**(19) New Grant Anticipation Revenue Vehicle (GARVEE) Debt Service:** Included in the above Federal Funds appropriation is \$12,410,800 in fiscal year 2008-2009 and \$24,821,600 in fiscal year 2009-2010 for GARVEE Bonds debt service payments relating to projects financed by \$231,000,000 in GARVEE Bonds.

**(20) Crittenden County Property:** *Whereas the existing real property in Crittenden County located at 110 Old Salem Road has become unsuitable for public use as a Transportation Cabinet maintenance facility due to its age, and whereas this property would be more suitable for use by the Crittenden County Board of Education as it is adjacent to the Crittenden County High School, the General Assembly authorizes the exchange of this property with the Crittenden County Industrial Authority property in Industrial Park North. Upon conveyance of title to sufficient property to the Transportation Cabinet by the Crittenden County Industrial Authority, the Transportation Cabinet shall construct a new maintenance facility and all necessary adjacent facilities. Upon completion and occupation of the new maintenance facility and approval required by KRS 45A.045, the Commonwealth shall convey title to the existing maintenance facility property to the Crittenden County Board of Education.*

➔Section 4. 2008 Kentucky Acts Chapter 127, Part II, Capital Projects Budget; (10) Payments for Wetland Restoration, at page 543, is amended to read as follows:

**(10) Payments for Wetland Restoration:** Obligations due from the Department of Highways from state funds for fees to the fund established by KRS 150.225(3) shall be deposited into an Other Special Revenue Fund

established within the Transportation Cabinet. Payments in satisfaction of these obligations shall be made from the capital project appropriation in Part II, K., 1., ~~018.017~~ of this Act.

➔Section 5. 2008 Kentucky Acts Chapter 127, Part II, Capital Projects Budget; K. Transportation Cabinet; 1. General Administration and Support, at pages 581 to 582, is amended to read as follows:

**1. GENERAL ADMINISTRATION AND SUPPORT**

**001. Replace Automated Vehicle Information System (AVIS)**

Bond Funds	25,000,000	-0-
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**002. Kentucky Horse Park Roads and Pedways - FEI Games**

Road Fund	10,300,000	-0-
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**(1) Kentucky Horse Park Roads and Pedways - FEI Games:** Included in the above Road Fund appropriation is the amount necessary to complete roads, parking infrastructure, and pedways for the 2010 FEI World Equestrian Championship Games.

**003. Road Maintenance Parks**

Road Fund	1,500,000	1,500,000
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**004. Repair Loadometer and Rest Areas**

Road Fund	900,000	600,000
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**005. Purchase TRNS\*PORT Upgrade**

Road Fund	1,300,000	-0-
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**006. Building Renovations and Emergency Repairs**

Road Fund	600,000	600,000
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**007. Various Environmental Compliance**

Road Fund	500,000	500,000
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**008. Aircraft Maintenance Pool - 2008-2010**

Investment Income	500,000	500,000
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**009. HVAC Maintenance and Repairs**

Road Fund	400,000	400,000
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**010. Purchase Bridge Snooper**

Road Fund	500,000	-0-
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**011. Replace Overhead Doors and Emergency Repairs**

Road Fund	200,000	200,000
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**012. Painting and Roof Repair or Replacement**

Road Fund	200,000	200,000
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**013. Purchase One Track Mounted Core Drill**

Road Fund	375,000	-0-
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**014. Purchase GPS Surveying Equipment**

Road Fund	317,000	-0-
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**015. Repair Salt Storage Structures**

Road Fund	150,000	150,000
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**016. Purchase GPS Virtual Reference System**

Road Fund	150,000	-0-
<b>017. 2008 Ryder Cup Parking</b>		
Road Fund	600,000	-0-

(1) **2008 Ryder Cup Parking:** Included in the above Road Fund appropriation is the amount necessary to complete parking infrastructure improvements at the Kentucky Fair and Exposition Center pursuant to the 2008 Ryder Cup Trade Agreement.

<b>018. Wetland Restoration</b>		
Bond Funds	10,000,000	-0-
<b>019. Construct Spencer County Maintenance Facility and Salt Storage Structure Reauthorization (\$910,000 Road Fund)</b>		
<b>020. Construct Larue County Maintenance Facility and Salt Storage Structure Reauthorization (\$910,000 Road Fund)</b>		

➔Section 6. 2008 Kentucky Acts Chapter 127, Part VIII, Road Fund Budget Reduction Plan, at page 599, is amended to read as follows:

#### PART VIII

##### A. FISCAL YEAR 2008-2009 ROAD FUND BUDGET REDUCTION PLAN

*Notwithstanding KRS 48.130 and 48.600, a Road Fund Budget Reduction Plan is enacted for fiscal year 2008-2009 for state government pursuant to the Consensus Forecasting Group's official revenue revision dated November 26, 2008, that estimated Road Fund revenue receipts of \$1,220,100,000 in fiscal year 2008-2009 and that projected a Road Fund revenue shortfall of \$104,706,400 in fiscal year 2008-2009, as may be modified by related Acts and actions of the General Assembly in an extraordinary or regular session. Given the fiscal year 2008-2009 Road Fund revenue shortfall as identified by the Consensus Forecasting Group, the Governor shall implement sufficient reductions as may be required to protect the highest possible level of service.*

##### B. FISCAL YEAR 2009-2010 ROAD FUND BUDGET REDUCTION PLAN

~~{There is established a Road Fund Budget Reduction Plan for fiscal year 2008-2009 and fiscal year 2009-2010.}~~ *Notwithstanding*~~{Pursuant to}~~ **KRS 48.130 and 48.600, a Road Fund Budget Reduction Plan is enacted for fiscal year 2009-2010** in the event of an actual or projected shortfall in estimated Road Fund revenue receipts of ~~{~~\$1,324,806,400 in fiscal year 2008-2009 and ~~}~~\$1,405,103,400 in fiscal year 2009-2010, *as may be modified by related Acts and actions of the General Assembly in an extraordinary or regular session. If the actual or projected revenue shortfall is five percent or less in aggregate in the enacted Road Fund revenue receipts*~~{as determined by KRS 48.120(3)}~~, the Governor shall implement sufficient reductions as may be required to protect the highest possible level of service. *If the actual or projected revenue shortfall is greater than five percent in aggregate, the Governor is not empowered nor directed to take necessary actions with respect to the Transportation Cabinet's budget units to balance the budget.*

➔Section 7. Whereas the Commonwealth of Kentucky is facing a projected Road Fund revenue shortfall, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by the Governor March 24, 2009.

**CHAPTER 95****(HB 541)**

AN ACT relating to coordinated benefits for Kentucky National Guard members returning from deployment and declaring an emergency.

➔Section 1. KRS 38.030 is amended to read as follows:

- (1) Only the Governor shall have the authority to order units and members of the Kentucky National Guard into state active duty.
  - (a) The Governor may order units and individual members of the Kentucky National Guard into state active duty for any of the following purposes:
    1. Protecting lives and property;
    2. Assisting in disaster relief or other humanitarian efforts;
    3. Preventing or suppressing riot or civil disorder;
    4. Enforcing the laws of the Commonwealth; or
    5. Other similar purpose.
  - (b) In addition to ordering personnel and units to state active duty, the Governor may order other members of the Kentucky National Guard to participate in or perform duty in support of state active duty missions notwithstanding the fact that they are then entitled to receive federal pay and allowances pursuant to Title 32 of the United States Code. The personnel may be ordered to perform state active duty support missions either prior to, during, or after the time that state active duty missions are planned or performed.
  - (c) Members of the National Guard who are ordered to perform duty as provided in subsection (1)(b) of this section while they are entitled to receive federal pay under Title 32 of the United States Code shall have all of the powers, immunities, and benefits conferred by law upon persons ordered to state active duty except that they shall receive no additional pay for the duty and the provisions of KRS 38.235 shall not apply to them. The powers, immunities, and benefits conferred upon those persons shall be in addition to, and not in place of, those powers, immunities, and benefits provided under federal law.
  - (d) Any member of the National Guard may, with his consent, be ordered to state active duty without pay.
- (2) The Governor may direct the commanding officer of the military forces ordered to state active duty to report to any civil officer, including, but not limited to, judge, county judge/executive, mayor, sheriff, or head of law enforcement or other public agency in whose jurisdiction the state active duty mission is to be performed. The civil officer may advise the commanding officer regarding the specific objectives to be accomplished by the military force, but the tactical direction and disposition of the troops and the particular means to be employed to accomplish the mission shall be left solely to the commanding officer of the National Guard.
- (3) Troops shall not be relieved from active field service except by order of the Governor.
- (4) *National Guard officers, enlisted soldiers, and airmen who are temporarily or permanently disabled as a direct result of an injury or disease arising out of the performance of an act in the line of duty as a result of the January, 2009 Winter Storm Response, Mission # 090127G01, shall, at the discretion of the Governor, remain on paid state active duty status until a competent medical authority releases them to return to their normal activities or the Governor deems it appropriate to relieve the individual from state active duty status. Compensation paid to the soldier or airman by the department shall be adjusted and maintained at the soldier or airman's regular rate of active duty pay; however, compensation paid by the department shall be reduced by the amount of payments received from workers' compensation insurance, Social Security benefits, and other federal or state-financed disability programs designed to supplement the soldier's or airman's income. Final compensation shall not be reduced by payments for medical care.*

➔Section 2. Whereas those who were called up by the Governor for Mission # 090127G01 and sustained injury or disease out of the performance of an act in the line of duty during that mission are in current need of

compensation while they recuperate, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by the Governor March 24, 2009.**

## CHAPTER 96

### (SB 4)

AN ACT relating to crimes and punishments and declaring an emergency.

WHEREAS, a number of ongoing and new substance abuse initiatives from the legislative, executive, and judicial branches of government, including the "Recovery Kentucky" initiative, drug courts, and jail and prison treatment initiatives, will soon be bringing over 40 million dollars in drug abuse treatment facilities and infrastructure online and available for the intensive treatment of persons suffering from substance abuse within the Commonwealth; and

WHEREAS, with the upcoming availability of new treatment facilities and programs and with the experience gained from drug courts, the Commonwealth is prepared to implement a more aggressive and effective response to the threat to public health and safety created by persons with severe substance abuse addictions; and

WHEREAS, over 80 percent of the persons involved in the Kentucky Criminal Justice System are there as a result, either directly, or indirectly of drug abuse;

NOW, THEREFORE,

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall develop an intensive secured substance abuse recovery program utilizing existing resources or by contract to house and care for persons suffering from substance abuse who have been charged with a felony offense.*
- (2) *The program shall accept persons referred to it under Sections 4 and 5 of this Act.*
- (3) *Persons may agree to be ordered into the program for a period of not less than ninety (90) days and not more than three hundred sixty-five (365) days. No person shall be involuntarily ordered into the program, a commitment shall not occur before the court has considered an evaluation of the defendant's treatment needs and conducted a hearing where the defendant may appear with counsel with an opportunity to present evidence on his or her own behalf, and persons in the program may petition the court to review the program's determination as to the length of time the person is to remain in the program or to issue an order to leave the program, which the court shall grant upon request, at any time. However, that departure shall constitute a material breach of any agreement to hold the person's case in abeyance or of the person's pretrial diversion agreement. The court shall revoke a defendant's program commitment over the defendant's objection prior to the expiration of the commitment period only pursuant to an order of the committing court issued after the court has conducted a hearing on the matter where the defendant may appear with counsel and present evidence on his or her behalf.*
- (4) *The department shall locate the program in a secure facility with security standards comparable to those found in a minimum security correctional institution operated by the department.*
- (5) *The program shall be capable of concurrently housing no fewer than two hundred (200) persons. The department shall have regulatory authority, when the program is at or near capacity, to prioritize admissions to the program.*
- (6) *The program's recovery component shall be designed to serve the committed person's substance abuse condition, and to provide the person with the skills and training needed to prevent the person from engaging in substance abuse upon release from the program. The program shall provide each person leaving the program with an aftercare plan, which shall include a referral to a local substance abuse provider capable of providing a level of continuing substance abuse care appropriate to the released person's needs. In designing the program, the department shall consult with and may contract with the Division of Mental Health and Substance Abuse Services.*

➔Section 2. KRS 431.515 is amended to read as follows:

- (1) All trial courts in this Commonwealth having jurisdiction of criminal causes shall provide such pretrial release investigation and services as necessary to effectuate the purposes of KRS 431.510 to 431.550, **including Section 3 of this Act**, and, where practical, to assist in the earliest possible determination of whether a person is a needy person under KRS Chapter 31.
- (2) The Supreme Court may by appropriate rule or order establish and provide for such pretrial investigation and release services including, where practical, the taking of financial statements, and the court's determination of whether a person is a needy person as provided in KRS 31.120.

➔SECTION 3. A NEW SECTION OF KRS 431.510 TO 431.550 IS CREATED TO READ AS FOLLOWS:

*When considering the pretrial release of a person charged with a felony offense under KRS Chapter 218A or a person charged with a felony offense whose criminal record indicates a history of recent and relevant substance abuse, the court considering the release shall cause the court's pretrial release investigation and services office to have the person screened for recent and relevant substance abuse risk factors. A person's refusal to participate in the screening shall not disqualify the person from being granted pretrial release. If this screening indicates the presence of recent and relevant substance abuse risk factors, the court may order as a condition of pretrial release that the person:*

- (1) *Undertake any testing ordered by the court under KRS 431.520 or 431.525;*
- (2) *Participate in an additional assessment of the person's condition;*
- (3) *Participate in a secular or faith-based treatment or recovery program if one (1) is identified as appropriate to the person as a result of the person's initial assessment or an additional assessment performed under subsection (2) of this section; and*
- (4) *Appear at any subsequent hearing ordered by the court where the person's conditions of pretrial release may be reviewed and modified as the result of any testing performed under subsection (1) of this section, any additional assessment performed under subsection (2) of this section, any additional assessment of the defendant performed by a qualified mental health professional which the defendant may offer for the court's consideration, or the person's compliance with any treatment or recovery plan ordered by the court under subsection (3) of this section.*

➔SECTION 4. A NEW SECTION OF KRS 533.250 TO 533.260 IS CREATED TO READ AS FOLLOWS:

- (1) *Every pretrial diversion program shall set as a condition precedent for entry into the program that any defendant charged with a Class D felony offense under KRS Chapter 218A and any defendant charged with a Class D felony offense whose criminal, medical, or mental health record indicates a present need for or benefit from substance abuse treatment participate in and demonstrate suitable compliance with the terms of a secular or faith-based substance abuse treatment or recovery program if space is available in a treatment or recovery program suitable for that defendant. The substance abuse treatment or recovery program shall be appropriate to the defendant's needs, and may include commitment to an intensive outpatient program, a residential substance abuse treatment or recovery facility, or the intensive secured drug abuse treatment program developed under Section 1 of this Act. Consideration may be given, in whole or in part, to a defendant's participation in drug monitoring or a substance abuse treatment or recovery plan ordered under Section 3 of this Act as evidence of suitable compliance under this section.*
- (2) *The court may waive compliance with subsection (1) of this section if the defendant can show that exigent circumstances exist sufficient to justify diversion program participation without a prior demonstration of treatment compliance.*
- (3) *The court may continue in effect any nonfinancial conditions of pretrial release imposed under KRS 431.520 or 431.525 and may hold the case in abeyance during the period of time the defendant is attempting treatment or recovery prior to diversion under subsection (1) of this section.*
- (4) *The court may allow a person charged with a Class C felony to participate in a secular or faith-based substance abuse treatment or recovery program under subsection (1) of this section or obtain a waiver under subsection (2) of this section. If the person is successful in the program or is waived, the person shall be eligible for entry into the pretrial diversion program under the same terms, conditions, and limitations as a Class D felon.*

➔Section 5. KRS 533.250 is amended to read as follows:

- (1) A pretrial diversion program shall be operated in each judicial circuit. The chief judge of each judicial circuit, in cooperation with the Commonwealth's attorney, shall submit a plan for the pretrial diversion program to the Supreme Court for approval on or before December 1, 1999. The pretrial diversion program shall contain the following elements:
- (a) The program may be utilized for a person charged with a Class D felony offense who has not, within ten (10) years immediately preceding the commission of this offense, been convicted of a felony under the laws of this state, another state, or of the United States, or has not been on probation or parole or who has not been released from the service of any felony sentence within ten (10) years immediately preceding the commission of the offense;~~[-]~~
  - (b) The program shall not be utilized for persons charged with offenses for which probation, parole, or conditional discharge is prohibited under KRS 532.045;~~[-]~~
  - (c) No person shall be eligible for pretrial diversion more than once in a five (5) year period;~~[-]~~
  - (d) No person shall be eligible for pretrial diversion who has committed a sex crime as defined in KRS 17.500. A person who is on pretrial diversion on July 12, 2006, may remain on pretrial diversion if the person continues to meet the requirements of the pretrial diversion and the registration requirements of KRS 17.510;~~[-]~~
  - (e) Any person charged with an offense not specified as precluding a person from pretrial diversion under paragraph (b) of this subsection may apply in writing to the trial court and the Commonwealth's attorney for entry into a pretrial diversion program;~~[-]~~
  - (f) Any person shall be required to enter an Alford plea or a plea of guilty as a condition of pretrial diversion;
  - (g) *The provisions of Section 4 of this Act shall be observed; and*
  - (h) *The program may include as a component referral to the intensive secured substance abuse treatment program developed under Section 1 of this Act for persons charged with a felony offense under KRS Chapter 218A and persons charged with a felony offense whose record indicates a history of recent and relevant substance abuse who have not previously been referred to the program under Section 4 of this Act.*
- (2) The Commonwealth's attorney shall make a recommendation upon each application for pretrial diversion to the Circuit Judge in the court in which the case would be tried. The court may approve or disapprove the diversion.
- (3) The court shall assess a diversion supervision fee of a sufficient amount to defray all or part of the cost of participating in the diversion program. Unless the fee is waived by the court in the case of indigency, the fee shall be assessed against each person placed in the diversion program. The fee may be based upon ability to pay.

➔Section 6. KRS 532.120 is amended to read as follows:

- (1) An indeterminate sentence of imprisonment commences when the prisoner is received in an institution under the jurisdiction of the Department of Corrections. When a person is under more than one (1) indeterminate sentence, the sentences shall be calculated as follows:
- (a) If the sentences run concurrently, the maximum terms merge in and are satisfied by discharge of the term which has the longest unexpired time to run; or
  - (b) If the sentences run consecutively, the maximum terms are added to arrive at an aggregate maximum term equal to the sum of all the maximum terms.
- (2) A definite sentence of imprisonment commences when the prisoner is received in the institution named in the commitment. When a person is under more than one (1) definite sentence, the sentences shall be calculated as follows:
- (a) If the sentences run concurrently, the terms merge in and are satisfied by discharge of the term which has the longest unexpired time to run; or
  - (b) If the sentences run consecutively, the terms are added to arrive at an aggregate term and are satisfied by discharge of the aggregate term.

- (3) Time spent in custody prior to the commencement of a sentence as a result of the charge that culminated in the sentence shall be credited by the court imposing sentence toward service of the maximum term of imprisonment. If the sentence is to an indeterminate term of imprisonment, the time spent in custody prior to the commencement of the sentence shall be considered for all purposes as time served in prison.
- (4) If a person has been in custody due to a charge that culminated in a dismissal, acquittal, or other disposition not amounting to a conviction, the amount of time that would have been credited under subsection (3) of this section if the defendant had been convicted of that charge shall be credited as provided in subsection (3) of this section against any sentence based on a charge for which a warrant or commitment was lodged during the pendency of that custody.
- (5) If a person serving a sentence of imprisonment escapes from custody, the escape shall interrupt the sentence. The interruption shall continue until the person is returned to the institution from which he escaped or to an institution administered by the Department of Corrections. Time spent in actual custody prior to return under this subsection shall be credited against the sentence if custody rested solely on an arrest or surrender for the escape itself.
- (6) *As used in subsections (3) and (4) of this section, time spent in custody shall include time spent in the intensive secured substance abuse recovery program developed under Section 1 of this Act and may include, at the discretion of the sentencing court, time spent in a different residential substance abuse treatment or recovery facility pursuant to Section 3 or 4 of this Act, if under each option allowed by this subsection, the person has successfully completed the program offered by the intensive secured substance abuse recovery program or the residential substance abuse treatment or recovery facility. If the defendant fails to complete a program, the court may still award full or partial sentence credit if the defendant demonstrates that good cause existed for the failure to complete the program.*

➔Section 7. Whereas the citizens of Kentucky face a present and ongoing danger as the result of substance abuse-driven crime and the provisions of this Act offer relief from that danger, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by the Governor March 24, 2009.**

## CHAPTER 97

### (SJR 12)

A JOINT RESOLUTION relating to the study of the Kentucky Penal Code and related offenses and declaring an emergency.

WHEREAS, the Kentucky Penal Code was enacted by the 1974 General Assembly and became effective January 1, 1975; and

WHEREAS, the present Kentucky Penal Code has been extensively added to and modified, and is the subject of many custom crimes and enhancements of penalties; and

WHEREAS, the General Assembly believes that the resulting prison and jail overcrowding and uneven penalty scheme presently contained in the code is in need of updating and change; and

WHEREAS, the 2008 General Assembly believed that the 34-year old Kentucky Penal Code was in urgent need of reinvention, redrafting, and modernization, and, through the enactment of Senate Joint Resolution 80, directed the co-chairs of the Interim Joint Committee on Judiciary to appoint a Penal Code Study Subcommittee of the Interim Joint Committee on Judiciary to conduct a thorough review of the Penal Code and its penalty scheme and make recommendations to the Legislative Research Commission no later than December 1, 2008; and

WHEREAS, the membership of the Penal Code Subcommittee was approved and appointed by the Legislative Research Commission; and

WHEREAS, the Penal Code Subcommittee, appointed under the authority of Senate Joint Resolution 80 of the 2008 General Assembly, began its assigned tasks and, through public meetings, determined that the issues are too complex to resolve by December 1, 2008;

NOW, THEREFORE,

***Be it resolved by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. Subject to the approval of the Legislative Research Commission, the co-chairs of the Interim Joint Committee on Judiciary are directed to appoint a Penal Code Study Subcommittee of the Interim Joint Committee on Judiciary which shall be re-authorized to continue studying all issues identified in Senate Joint Resolution 80 of the 2008 General Assembly and the issue of the treatment, incarceration, and release into the community of mentally incompetent individuals.

➔Section 2. The Executive and Judicial Branches of government shall provide necessary personnel, information, statistics, and other requested assistance to assist the subcommittee in the performance of its duties.

➔Section 3. The subcommittee may hold public hearings to ascertain the views of state and local officials, affected entities, crime victims, and the public as to what a new revision of the Penal Code should contain.

➔Section 4. The final report of the subcommittee may be in the form of a draft for a full or partial revision of the Kentucky Penal Code in conformity with the provisions of this Resolution. The report shall be delivered to the Legislative Research Commission no later than December 1, 2009. The draft may but shall not be required to have a commentary to accompany the draft.

➔Section 5. The provisions of this Resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the Penal Code study to an interim joint committee or subcommittee thereof, and to designate a study completion date.

➔Section 6. Whereas it is necessary to provide as much time as possible for the operation of the subcommittee, an emergency is declared to exist, and this Resolution takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Signed by the Governor March 24, 2009.**

**CHAPTER 98****(HB 444)**

AN ACT relating to deferred deposit transactions.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 286.9-010 is amended to read as follows:

As used in *this subtitle* [KRS 286.9-010 to 286.9-120 and KRS 286.9-990], unless the context requires otherwise:

- (1) *"Affiliate" means a person who directly or indirectly through one (1) or more intermediaries controls or is controlled by, or is under common control with, a licensee.*
- (2) *"Applicant" means a person filing an application or renewal application for a license under this subtitle.*
- (3) *"Archive" means to copy data to a long-term storage mechanism apart from the database.*
- (4) *"Cashing" means providing currency for a payment instrument.*
- (5) "Check" means any check, draft, money order, personal money order, travelers' check, or other demand instrument for the transmission or payment of money.
- (6) *"Closed" or "close" means that one (1) of the following has occurred in connection with a deferred deposit service transaction concerning the customer's payment instrument:*
  - (a) *The payment instrument is redeemed by the customer by payment to the licensee of the face amount of the payment instrument in cash;*
  - (b) *The payment instrument is exchanged by the licensee for a cashier's check or cash from the customer's financial institution;*
  - (c) *The payment instrument is deposited by the licensee, and the licensee has evidence that the person has satisfied the obligation;*
  - (d) *The payment instrument is collected by the licensee or its agent through any civil remedy available under the laws of this state; or*

- (e) *Any other reason that the executive director may deem to be proper under this subtitle.*
- (7)~~(2)~~ "Executive director" means the executive director of the Office of Financial Institutions~~, or his duly designated representative~~.
- (8) *"Consideration" means any premium or fee charged of any kind for the sale of goods or services in excess of the cash price of the goods or services.*
- (9) *"Control" means:*
- (a) *Ownership of, or the power to vote, directly or indirectly, twenty-five percent (25%) or more of a class of voting securities or voting interests of a licensee or applicant, or the person in control of a licensee or applicant;*
  - (b) *The power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority over a licensee or applicant, or the person in control of a licensee or applicant; or*
  - (c) *The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or applicant, or the person in control of a licensee or applicant.*
- (10) *"Customer" means a person who inquires into the availability of or applies for a deferred presentment service transaction or a person who enters into a deferred presentment service transaction.*
- (11) *"Customer transaction data" means all data reported to the database pertinent to a particular customer transaction, including the date of the transaction, identification of the licensee and location, the sum of money involved, the time payment is deferred, fees charged, any alleged violations of this subtitle, and any identifying customer information.*
- (12) *"Database" means the database described in Section 8 of this Act.*
- (13) *"Database provider" means one (1) of the following:*
- (a) *A third-party provider selected by the executive director under Section 8 of this Act to operate the statewide database described in that section; or*
  - (b) *The executive director, if the executive director has not selected a third-party provider under Section 8 of this Act.*
- (14) *"Deferred deposit service business" means a person who engages in deferred deposit transactions.*
- (15) *"Deferred deposit transaction" or "deferred presentment service transaction" means, for consideration, accepting a payment instrument, and holding the payment instrument for a period of time prior to deposit or presentment in accordance with an agreement with or any representation made to the customer whether express or implied.*
- (16) *"Delete" means to erase data by overwriting the data.*
- (17) *"Office" means the Office of Financial Institutions.*
- (18) *"Identifying customer information" means the name of the customer, his or her Social Security number, driver license number, or other state-issued identification number, address, any account numbers or information specific to a payment instrument provided by a customer to a licensee, a bank, savings bank, savings and loan association, or credit union, and any other nonpublic, personal financial information of a customer entered into the database or that comes into the possession of the database provider through customer or licensee inquiry or report.*
- (19) *"Licensee" means a person duly licensed by the executive director under this subtitle to conduct check cashing or deferred deposit service business in the Commonwealth.*
- (20) *"Maturity date" means the date on which a payment instrument is authorized to be redeemed or presented for payment.*
- (21) *"Payment instrument" means a check, draft, money order, or traveler's check, for the transmission or payment of money sold or issued to one (1) or more persons, whether or not such instrument is negotiable.*

- ~~{(3) "Consideration" includes any premium charged for the sale of goods or services in excess of the cash price of the goods or services.~~
- ~~(4) "Deferred deposit transaction" means, for consideration, accepting a check and holding the check for a period of time prior to deposit or presentment in accordance to an agreement with or any representation made to the maker of the check, whether express or implied.~~
- ~~(5) "Deferred deposit service business" means a person who engages in deferred deposit transactions.~~
- ~~(6) "Office" means the Office of Financial Institutions.~~
- ~~(7) "Licensee" means a person duly licensed by the executive director under KRS 286.9-010 to 286.9-120.]~~
- ~~(22){(8)} "Person" means any individual, partnership, association, joint stock association, trust, corporation, or other entity *however organized*, but shall not include the United States government or the government of this Commonwealth.~~

➔Section 2. KRS 286.9-070 is amended to read as follows:

- (1) Upon the filing of *a completed*~~[an]~~ application in a form prescribed by the executive director, accompanied by the fee and documents required in KRS 286.9-060, the *executive director*~~[office]~~ shall investigate to ascertain whether the qualifications prescribed by KRS 286.9-040 have been satisfied. If the executive director finds that the qualifications have been satisfied, and if *the executive director*~~[he]~~ approves the documents, he *or she* shall issue to the applicant a license to engage in the business of cashing checks or deferred deposit transactions in this Commonwealth.
- (2) The license shall be kept conspicuously posted in the place of business of the licensee~~[ and shall not be transferable or assignable].~~
- (3) A license issued under this section shall remain in force and effect through the remainder of the fiscal year ended June 30 following its date of issuance, unless~~[ earlier]~~ surrendered, suspended, or revoked under *this subtitle. A license issued under this subtitle shall expire by June 30 following the date of its issuance unless renewed by the filing of a completed renewal application and payment of the required fees with the executive director*~~[KRS 286.9-010 to 286.9-120].~~
- (4) A licensee shall notify the *executive director in writing at least*~~[office]~~ fifteen (15) business days before any change in the licensee's business location or name.
- (5) *A licensee shall file a written request for a change of control of that licensee with the executive director at least fifteen (15) business days prior to any change of control of the licensee. The executive director may require additional information considered necessary to determine whether a new application for a license is required. The person who requests the approval for a change of control shall pay the cost incurred by the executive director in investigating the change of control request.*
- (6) *A license issued under this subtitle shall be transferable or assignable in cases of ownership changes of the business or to facilitate the transfer or assignment of a license if the licensee is closing an alternate office location, subject to approval of the executive director and based on existing criteria of new applicant approvals in accordance with this section.*
- (7) *The executive director may deem an application or renewal application abandoned when the application received is incomplete and the applicant fails to provide any required information or fee under this subtitle or fails to respond to a request by the executive director for further information.*

➔Section 3. KRS 286.9-080 is amended to read as follows:

- (1) Each license may be renewed for the ensuing twelve (12) months period upon the *timely submission of a completed renewal application and* payment to the *executive director*~~[office]~~ annually on or before *June 20*~~[July 1]~~ of each year a license fee of five hundred dollars (\$500) for the first location and five hundred dollars (\$500) for each additional location.
- (2) *The executive director may reinstate a license that has expired within thirty-one (31) days of the expiration of the license if the licensee pays a late fee in the amount of one hundred dollars (\$100) and a reinstatement fee of five hundred dollars (\$500).*
- (3) *A license shall not be reinstated where the renewal application, fees, or any required information is received on or after August 1 of the year that the application was due.*

➔Section 4. KRS 286.9-100 is amended to read as follows:

- (1) ~~Each licensee shall keep and use in its business any books, accounts, and records the office may require to carry into effect the provisions of KRS 286.9-010 to 286.9-120 and the administrative regulations issued under those sections. Every licensee shall preserve the books, accounts, and records for at least two (2) years.~~
- (2) Any fee charged by a licensee for cashing a check *or entering into a deferred deposit transaction* shall be disclosed in writing to the bearer of the check prior to cashing the check *or entering into a deferred deposit transaction*, and the fee shall be deemed a service fee and not interest. A licensee shall not charge a service fee in excess of fifteen dollars (\$15) per one hundred dollars (\$100) on the face amount of the deferred deposit check. A licensee shall prorate any fee, based upon the maximum fee of fifteen dollars (\$15) *per one hundred dollars (\$100)*. This service fee shall be for a period of *at least* fourteen (14) days.
- (2)(3) Before a licensee shall deposit with any bank or other depository institution a check cashed by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.
- (3)(4) No licensee shall cash a check payable to a payee other than a natural person unless the licensee has previously obtained appropriate documentation from the board of directors or similar governing body of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.
- (4)(5) No licensee shall indicate through advertising, signs, billhead, or otherwise that checks may be cashed without identification of the bearer of the check; and any person seeking to cash a check shall be required to submit reasonable identification as prescribed by the *executive director*~~office~~. The provisions of this subsection shall not prohibit a licensee from cashing a check simultaneously with the verification and establishment of the identity of the presenter by means other than the presentation of identification.
- (5)(6) Within *two (2)*~~five (5)~~ business days after being advised by ~~a~~~~the payor~~ financial institution that a *payment instrument*~~check, draft, or money order~~ has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority, or *otherwise* represents the proceeds of illegal activity, the licensee shall notify the *executive director*~~office~~ and the *prosecutor or law enforcement authority in the county*~~Commonwealth's attorney for the judicial circuit~~ in which the check was received. If a *payment instrument*~~check, draft, or money order~~ is returned to the licensee by ~~a~~~~the payor~~ financial institution for any of these reasons, the licensee shall not release the *payment instrument*~~check, draft, or money order~~ without the *written* consent of the *prosecutor or*~~Commonwealth's attorney or other investigating~~ law enforcement authority, *or a court order*.
- (6)(7) No licensee shall alter or delete the date on any *payment instrument*~~check~~ accepted by the licensee.
- (7)(8) No licensee shall engage in unfair or deceptive acts, practices, or advertising in the conduct of the licensed business.
- (8)(9) No licensee shall require a customer to provide security for the transaction or require the customer to provide a guaranty from another person.
- (9)(10) A licensee shall not have more than *two (2)*~~one (1)~~ deferred deposit *transactions*~~transaction~~ from any one (1) customer at any one time. *The total proceeds received by the customer from all of the deferred deposit transactions shall not exceed*~~with a face value greater than~~ five hundred dollars (\$500).
- (10)(11) (a) *Prior to the establishment of the common database of deferred deposit transactions established by Section 8 of this Act*, each licensee shall inquire of any *customer*~~person~~ seeking to present a deferred deposit transaction, whether the *customer*~~person~~ has any outstanding deferred deposit transactions from any *licensee*~~licensees~~.
- (b) If the customer represents in writing that the customer has no more than one (1) deferred deposit transaction outstanding to any licensee and that the *total proceeds received by the customer from*~~face value of~~ the outstanding deferred deposit transaction issued by the customer does not equal or exceed five hundred dollars (\$500), a licensee may accept a deferred deposit transaction in an amount that, when combined with the customer's other outstanding deferred deposit transaction, does not exceed five hundred dollars (\$500) *of total proceeds received by the customer*.
- (c) If the customer represents in writing that the customer has more than one (1) deferred deposit transaction outstanding to *licensees*~~any licensee~~ or if the *total proceeds received by the customer*

~~from~~~~[face value of]~~ the deferred deposit *transactions equal or exceed*~~[transaction issued by the customer equals or exceeds]~~ five hundred dollars (\$500), a licensee shall not *enter into*~~[accept]~~ another deferred deposit transaction *with*~~[from]~~ that customer until the customer represents to the licensee in writing that the customer qualifies to *enter into*~~[issue]~~ a new deferred deposit transaction under the requirements set forth in this *subtitle*~~[section]~~.

(d) *If the database described in Section 8 of this Act is unavailable due to technical difficulties with the database, as determined by the executive director, the licensee shall utilize the process established in this subsection to verify deferred deposit transactions.*

~~(11)~~~~(12)~~ A licensee shall not use any device or agreement, including agreements with *an affiliate of a licensee*~~[affiliated licensees]~~, with the intent to obtain greater charges than are authorized in this *subtitle*~~[section]~~.

~~(12)~~~~(13)~~ No licensee shall agree to hold a deferred deposit transaction for more than sixty (60) days.

~~(13)~~~~(14)~~ Each deferred deposit transaction shall be made according to a written agreement that shall be dated and signed by the customer and the licensee or an authorized agent of the licensee *at the licensed location*, and made available to the *executive director*~~[office]~~ upon request. The customer shall receive a copy of this agreement.

~~(14)~~~~(15)~~ A licensee or its affiliate shall not for a fee renew, roll over, or otherwise consolidate a deferred deposit transaction for a customer.

~~(15)~~~~(16)~~ No individual who enters into a deferred deposit transaction with a licensee shall be convicted under the provisions of KRS 514.040.

~~(16)~~~~(17)~~ No licensee who enters into a deferred deposit transaction with an individual shall prosecute or threaten to prosecute an individual under the provisions of KRS 514.040.

~~(17)~~~~(18)~~ Each licensee shall conspicuously display in *each of its*~~[every]~~ deferred deposit business *locations*~~[location]~~ a sign *supplied by the executive director* that gives the following notice: "No person who enters into a post-dated~~[check]~~ or deferred deposit~~[check]~~ transaction with this business establishment will be prosecuted *for* or convicted of writing cold checks or of theft by deception under the provisions of KRS 514.040.

(18) *A licensee may not enter into a deferred deposit transaction with a customer who has two (2) open deferred deposit transactions.*

(19) *A licensee shall verify a customer's eligibility to enter into a deferred presentment service transaction by doing one (1) of the following, as applicable:*

(a) *If the executive director has not implemented a database under Section 8 of this Act or the database described in Section 8 of this Act is not fully operational, as determined by the executive director, the licensee shall verify that the customer meets the eligibility requirements for a deferred presentment service transaction under this subtitle. The licensee shall maintain a database of all of the licensee's transactions at all of its locations and search that database to meet its obligation under this subtitle.*

(b) *If the executive director has implemented a database under Section 8 of this Act and the database described in that section is fully operational, as determined by the executive director, the licensee shall promptly and accurately access the database through an Internet real-time connection, and verify that the customer meets the eligibility requirements for a deferred presentment service transaction under this subtitle.*

➔Section 5. KRS 286.9-110 is amended to read as follows:

(1) The executive director may suspend,~~[or]~~ revoke, *place on probation, condition, restrict, refuse to issue or renew a license, accept the surrender of a license in lieu of revocation or suspension, order that refunds to customers be made, or issue a cease-and-desist order, if the executive director finds that the person, licensee, or a person in control of a licensee*~~[license on any ground on which he may refuse to grant a license or for violation of any provision of KRS 286.9-010 to 286.9-120 or if the licensee]:~~

(a) Has committed any fraud, engaged in any dishonest activities, or made any misrepresentation;

(b) *Does not meet, has failed to comply with, or* has violated any provisions of *this subtitle*~~[KRS 286.9-010 to 286.9-120]~~ or any administrative regulation issued pursuant thereto, *or any order of the*

- executive director issued pursuant thereto*, or has violated any other law in the course of its or his *or her* dealings as a licensee;
- (c) Has made a false statement in the application for the license or failed to give a **truthful**~~[true]~~ reply to a question in the application;~~[-or]~~
  - (d) Has demonstrated his or *her incompetence*~~[his incompetency]~~ or untrustworthiness to act as a licensee;
  - (e) *Is unfit, through lack of financial responsibility or experience, to conduct the business of a check-cashing or deferred deposit service business, as the case may be;*
  - (f) *Does not conduct his or her business in accordance with the law or conducts business by a method that includes, or would include, activities that are illegal where performed, or has willfully violated any provision of this subtitle; or any administrative regulation promulgated or order of the executive director issued hereunder;*
  - (g) *Is insolvent;*
  - (h) *Is the subject of an administrative cease-and-desist order or similar order, or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the person, applicant, or licensee;*
  - (i) *Has made or caused to be made to the executive director any false representation of material fact or has suppressed or withheld from the executive director any information that the applicant or licensee possesses and which, if submitted by him or her, would have rendered the applicant or licensee ineligible to be licensed under this subtitle;*
  - (j) *Has refused to permit an examination or investigation by the executive director of his or her books and affairs or has refused or failed, within a reasonable time, to furnish any information or records, or make any report that may be required or requested by the executive director;*
  - (k) *Has been convicted of a felony;*
  - (l) *Has been convicted of any misdemeanor of which an essential element is fraud, breach of trust, or dishonesty;*
  - (m) *Has had any license, registration, or claim of exemption related to the financial services industry denied, revoked, suspended, conditioned, restricted, or probated under the laws of this state, any other state, or the United States, or has surrendered, withdrawn, or terminated any license, registration, or claim of exemption issued or registration granted by this state or any other jurisdiction under threat of administrative action;*
  - (n) *Has employed or contracted with a person who has failed to license or has had a license, registration, or claim of exemption denied, revoked, suspended, conditioned, restricted, or probated in this Commonwealth or another state;*
  - (o) *Has failed to pay any required fee under this subtitle;*
  - (p) *Has abandoned an application or renewal application by failing to provide the executive director any information required under this subtitle, or requested by the executive director, to complete an application;*
  - (q) *Has failed to comply with an administrative or court order imposing child support obligations;*
  - (r) *Has failed to pay state income taxes or to comply with any administrative or court order directing the payment of state income tax;*
  - (s) *Has failed to properly verify a customer's eligibility for a deferred deposit transaction;*
  - (t) *Has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under the United States Bankruptcy Code, 11 U.S.C. secs. 101 to 110;*
  - (u) *Has suspended payment of its obligations or has made an assignment for the benefit of its creditors;*
  - (v) *Has violated any of the recordkeeping and reporting requirements of the United States government including 31 U.S.C. secs. 5311 to 5332 and 31 C.F.R. pt. 103; or*

- (w) *No longer meets the requirements under this subtitle to hold a license.*
- (2) If the reason for revocation,~~or~~ suspension, **restriction, condition, or probation** of a licensee's license at any one location is of general application to all locations operated by a licensee, the executive director may revoke,~~or~~ suspend, **restrict, condition, or probate** all licenses issued to a licensee.
  - (3) *Any person who has had a license denied by the executive director shall not be eligible to apply for a license under this subtitle until after expiration of one (1) year from the date of denial.*
  - (4) *Any person who has had a license revoked by the executive director shall not be eligible to apply for a license under this subtitle until after expiration of three (3) years from the date of revocation. A person whose license has been revoked twice shall be deemed permanently revoked and shall not again be eligible for a license under this subtitle.*
  - (5) *Any person whose license has been denied, suspended, revoked, or surrendered in lieu of revocation or suspension under this section is prohibited from participating in any business activity of a licensee under this subtitle and from engaging in any business activity on the premises where a licensee under this subtitle is conducting its business.*
  - (6) *The surrender or expiration of a license shall not affect the person's civil or criminal liability for acts committed prior to the license surrender or expiration. Revocation, suspension, refusal to renew, surrender, or expiration of a license shall not impair or affect the obligation of any preexisting contract between a licensee and a customer. The surrender or expiration of a license shall not affect a proceeding to suspend or revoke a license.*
  - (7) *The executive director may notify the Department of Revenue, which may institute an action in the name of the Commonwealth of Kentucky, in the Franklin Circuit Court, or any court of competent jurisdiction, for the recovery of any civil penalty, fine, cost, or fee assessed or levied under this subtitle.*
  - (8) *The executive director may file a complaint in the Franklin Circuit Court, or any court of competent jurisdiction, for a temporary restraining order or injunction against any person, where the executive director has reason to believe from evidence satisfactory to the executive director that such person has violated, or is about to violate, a provision in this subtitle, for the purpose of restraining and enjoining such person from continuing or engaging in the violation or doing any act in furtherance thereof. The court shall have jurisdiction over the proceeding and shall have the power to enter an order or judgment awarding preliminary or final injunctive relief and any other relief that the court deems proper. Any person who violates a temporary restraining order or injunction issued by the court entered as a result of a violation of this subtitle shall be held in contempt of court and the court may assess a civil penalty in an amount equivalent to the amounts found in Section 9 of this Act.*

➔Section 6. KRS 286.9-040 is amended to read as follows:

To qualify for a license, an applicant shall satisfy the following requirements:

- (1) The applicant shall deposit with the executive director one (1) of the following *instruments*:
  - (a) An irrevocable letter of credit in the following amounts:
    1. If an applicant has only one (1) business location, the amount shall be fifty thousand dollars (\$50,000);
    2. If an applicant has two (2) to five (5) business locations, the amount shall be one hundred thousand dollars (\$100,000);
    3. If an applicant has six (6) to ten (10) business locations, the amount shall be one hundred fifty thousand dollars (\$150,000);~~and~~
    4. If an applicant has *eleven (11) to twenty (20)*~~more than ten (10)~~ business locations, the amount shall be two hundred thousand dollars (\$200,000);
    5. *If an applicant has twenty-one (21) to thirty (30) business locations, the amount shall be three hundred thousand dollars (\$300,000);*
    6. *If an applicant has thirty-one (31) to forty (40) business locations, the amount shall be four hundred thousand dollars (\$400,000); and*

7. ***If an applicant has more than forty (40) business locations, the amount shall be five hundred thousand dollars (\$500,000);***
- (b) ***A corporate surety bond made payable to the executive director in the same amount that is required in paragraph (1)(a) of this section;***
- (c) Evidence that the applicant has established an account payable to the executive director in a federally insured financial institution in this state and ***has deposited***~~deposit~~ money of the United States in an amount equal to the amount of the required letter of credit; or
- ~~(d)~~~~(e)~~ A savings certificate of a federally insured financial institution in this state for an amount payable that is equal to the amount of the required letter of credit and that is not available for withdrawal except by direct order of the executive director. Interest earned on the certificate accrues to the applicant.
- (2) ***Every instrument required in this section shall provide for suit thereon by any person who has a cause of action under this subtitle. The total liability of the surety, to all persons, cumulative or otherwise, shall not exceed the amount specified in the bond.***
- (3) ***Every instrument required in this section shall be made payable to the executive director.***
- (4) ***Every instrument required in this section shall be available for the recovery of expenses, fines, and fees levied by the executive director under this subtitle, and for losses or damages that are determined by the executive director to have been incurred by any customer as a result of the applicant's or licensee's failure to comply with the requirements of this subtitle.***
- (5) ***Every instrument required in this section shall provide that no suit shall be maintained to enforce any liability on the bond unless brought within three (3) years after the act upon which it is based.***
- (6) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant's business will be conducted honestly, carefully, and efficiently. In determining whether this qualification has been met, the executive director may review and approve:
- (a) The business record and the capital adequacy of the applicant;
- (b) The competence, experience, integrity, and financial ability of any person who:
1. Is a director, officer, supervisory employee, or five percent (5%) or more shareholder of the applicant; or
  2. Owns or controls the applicant; and
- (c) Any record, on the part of the applicant or any person referred to in subparagraph (b)1. and 2. of:
1. Any criminal activity;
  2. Any fraud or other act of personal dishonesty;
  3. Any act, omission, or practice which constitutes a breach of a fiduciary duty; or
  4. Any suspension, ***revocation***, or removal, by any agency or department of the United States or any state, from participation in the conduct of any business.

➔SECTION 7. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) ***Any deferred deposit transaction agreement made with a person who is not licensed under this subtitle shall be void, and the person shall not collect any principal, fee, interest, charges, or recompense whatsoever.***
- (2) ***The executive director may void a deferred deposit transaction agreement when it is determined by the executive director that the licensee has violated any provision of this subtitle. The licensee shall be allowed to recover from the customer any principal paid by the licensee to the customer, but the licensee shall not recover any service fee or other charge related to the deferred deposit transaction.***
- (3) ***For purposes of this section, "payment instrument" also includes debit authorization, electronic funds transfer, and any other form of electronic transmission of money.***

➔SECTION 8. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *The executive director shall, on or before July 1, 2010, implement a common database with real-time access through an Internet connection for deferred deposit service business licensees as provided in this subtitle unless implementing the database by that date would be financially impracticable for the executive director to design and operate a database or because a contract with a qualified third party provider has not been entered into. The database shall be accessible to the office and the deferred deposit service business licensee to verify whether any deferred deposit transactions are outstanding for a particular person. A deferred deposit service business licensee shall accurately and promptly submit such data before entering into each deferred deposit transaction in such format as the executive director may require by rule or order, including the customer's name, social security number or employment authorization alien number, address, driver's license number, amount of the transaction, date of transaction, date that the completed transaction is closed, and any additional information required by the executive director. The executive director may adopt rules to administer and enforce the provisions of this subtitle and to assure that the database is used by deferred deposit service business licensees in accordance with this subtitle.*
- (2) *The executive director shall impose a fee of one dollar (\$1) per transaction for data required to be submitted by a deferred deposit service business licensee, which fee may be charged to the customer.*
- (3) *The executive director may operate the database described in subsection (1) of this section or may select and contract with a third-party provider to operate the database. If the executive director contracts with a third-party provider for the operation of the database, all of the following apply:*
  - (a) *The executive director shall ensure that the third-party provider selected as the database provider operates the database pursuant to the provisions of this subtitle;*
  - (b) *The executive director shall consider cost of service and ability to meet all the requirements of this subtitle in selecting a third-party provider as the database provider;*
  - (c) *In selecting a third-party provider to act as the database provider, the executive director shall give strong consideration to the third-party provider's ability to prevent fraud, abuse, and other unlawful activities associated with deferred presentment service transactions and provide additional tools for the administration and enforcement of this subtitle;*
  - (d) *The third-party provider shall use the data collected under this subtitle as only prescribed in this subtitle and the contract with the office and for no other purpose;*
  - (e) *If the third-party provider violates this subtitle, the executive director may terminate the contract and the third-party provider may be barred from becoming a party to any other state contracts;*
  - (f) *A person injured by the third-party provider's violation of this subtitle may maintain a civil cause of action against the third-party provider and may recover actual damages plus reasonable attorney's fees and court costs; and*
  - (g) *The executive director may require that the third-party provider collect the fee assessed in subsection (2) of this section from the licensee. The third-party provider shall remit the fee collected from the licensee to the executive director no later than the first day of each month. The third-party provider shall deposit any fee collected in a separate escrow account in a federally insured financial institution and shall hold the fee deposited in trust for the Commonwealth of Kentucky.*
- (4) *The database described in subsection (1) of this section shall allow a deferred deposit service business licensee accessing the database to do all of the following:*
  - (a) *Verify whether a customer has any open deferred deposit transactions with any deferred deposit business service licensee that have not been closed;*
  - (b) *Provide information necessary to ensure deferred deposit service business licensee compliance with any requirements imposed by the United States Treasury Office of Foreign Assets Control and United States Treasury Office of Financial Crimes Enforcement Network; and*
  - (c) *Track and monitor the number of customers who notify a deferred deposit service business licensee of violations of this subtitle, the number of times a deferred deposit service business licensee agreed that a violation occurred, the number of times that a deferred deposit service business licensee did*

*not agree that a violation occurred, the amount of restitution paid, and any other information the executive director requires by rule or order.*

- (5) *While operating the database, the database provider shall do all of the following:*
  - (a) *Establish and maintain a process for responding to transaction verification requests due to technical difficulties occurring with the database that prevent the licensee from accessing the database through the Internet;*
  - (b) *Comply with any applicable federal and state provisions to prevent identity theft;*
  - (c) *Provide accurate and secure receipt, transmission, and storage of customer data; and*
  - (d) *Meet the requirements of this subtitle.*
- (6) *When the database provider receives notification that a deferred deposit service transaction has been closed, the database provider shall designate the transaction as closed in the database immediately, but in no event after 11:59 p.m. on the day the executive director or database provider receives notification.*
- (7) *The database provider shall automatically designate a deferred deposit service transaction as closed in the database five (5) days after the transaction maturity date unless a deferred deposit service business licensee reports to the database provider before that time that the transaction remains open because of the customer's failure to make payment; that the transaction is open because the customer's payment instrument or an electronic redeposit is in the process of clearing the banking system; or that the transaction remains open because the customer's payment instrument is being returned to the deferred deposit service business licensee for insufficient funds, a closed account, or a stop payment order; or because of any other factors determined by the executive director. If a deferred deposit service business licensee reports the status of a transaction as open in a timely manner, the transaction remains an open transaction until it is closed and the database provider is notified that the transaction is closed.*
- (8) *If a deferred deposit service business licensee stops providing deferred deposit service transactions, the database provider shall designate all open transactions with that licensee as closed in the database sixty (60) days after the date the deferred deposit service business licensee stops offering deferred deposit service transactions, unless the deferred deposit service business licensee reports to the database provider before the expiration of the sixty (60) day period which of its transactions remain open and the specific reason each transaction remains open. The deferred deposit service business licensee shall also provide to the executive director a reasonably acceptable plan that outlines how the deferred deposit service business licensee will continue to update the database after it stops offering deferred presentment service transactions. The executive director shall promptly approve or disapprove the plan and immediately notify the deferred deposit service business licensee of the executive director's decision. If the plan is disapproved, the deferred deposit service business licensee may submit a new plan or may submit a modified plan for the deferred deposit service business licensee to follow. If at any time the executive director reasonably determines that a deferred deposit service business licensee that has stopped offering deferred deposit service transactions is not updating the database in accordance with its approved plan, the executive director shall immediately close or instruct the database provider to immediately close all remaining open transactions of that deferred deposit service business licensee.*
- (9) *The response to an inquiry to the database provider by a deferred deposit service business licensee shall state only that a person is eligible or ineligible for a new deferred deposit service transaction and describe the reason for that determination. Only the person seeking the transaction may make a direct inquiry to the database provider to request a more detailed explanation of a particular transaction that was the basis for the ineligibility determination. Any information regarding any person's transaction history is confidential; is not subject to public inspection; is not a public record subject to the disclosure requirements of the Kentucky Open Records Act, KRS 61.870 to 61.884; is not subject to discovery, subpoena, or other compulsory process, except in an administrative or legal action arising under this subtitle; and shall not be disclosed to any person other than the executive director.*
- (10) *The executive director may access the database provided under subsection (1) of this section only for purposes of an investigation of, examination of, or enforcement action concerning an individual database provider, licensee, customer, or other person.*
- (11) *The executive director shall investigate violations of and enforce this subtitle. The executive director shall not delegate his or her responsibilities under this subsection to any third-party provider.*

- (12) (a) *The executive director shall make a determination that the database is fully operational and shall send written notification to each licensee subject to the provisions of this subtitle:*
1. *That the database has been implemented; and*
  2. *Of the exact date that the database shall be considered operational for the data entry requirement established in paragraph (b) of this subsection.*
- (b) *A deferred deposit service business licensee shall promptly and accurately enter into the database all transactions undertaken by the licensee upon receipt of the written notification established in paragraph (a) of this subsection.*
- (13) *The executive director may, by rule or order, do all of the following:*
- (a) *Require that data be retained in the database only as required to ensure deferred deposit service business licensee compliance with this subtitle;*
  - (b) *Require that customer transaction data in the database are archived within three hundred sixty-five (365) days after the customer transaction is closed unless needed for a pending enforcement or legal action;*
  - (c) *Require that any identifying customer information is deleted from the database when data are archived; and*
  - (d) *Require that data in the database concerning a customer transaction are deleted from the database three (3) years after the customer transaction is closed or, if any administrative, legal, or law enforcement action is pending, three (3) years after the administrative, legal, or law enforcement action is completed, whichever is later.*
- (14) *The executive director may maintain access to data archived under subsection (13) of this section for examination, investigation, or legislative or policy review.*
- (15) *A deferred deposit service business licensee may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database, provided the deferred deposit licensee accurately and promptly submits such data as required before entering into a deferred deposit transaction with a customer.*
- (16) *The executive director may use the database to administer and enforce this subtitle.*
- (17) *The executive director may require a database provider to file a report by March 1 of each year containing the following information:*
- (a) *The total number and dollar amount of deferred deposit transactions entered into in the calendar year ending December 31 of the previous year;*
  - (b) *The total number and dollar amount of deferred deposit transactions outstanding as of December 31 of the previous year;*
  - (c) *The total dollar amount of fees collected for deferred deposit transactions as of December 31 of the previous year;*
  - (d) *The minimum, maximum, and average dollar amount of deferred deposit transactions entered into, the total dollar amount of the net charge-offs and write-offs, and the net recoveries of licensees as of December 31 of the previous year;*
  - (e) *The average deferred deposit transaction amount, the average number of transactions, and the average aggregate deferred deposit transaction amount entered into per customer as of December 31 of the previous year;*
  - (f) *The average number of days a customer was engaged in a deferred deposit transactions for the previous year; and*
  - (g) *An estimate of the average total fees paid per customer for deferred deposit transactions for the previous year.*
- (18) *Enforcement of this section shall be effective ninety (90) days after the database implementation date established by the executive director as set forth in subsection (12) of this section.*

➔SECTION 9. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *The executive director may levy a civil penalty against a person who violates any provision of, or administrative regulation promulgated under, this subtitle or any order issued by the executive director under this subtitle.*
- (2) *The civil penalty shall be not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000) per violation for each day the violation is outstanding, plus the state's costs and expenses for the examination, investigation, and prosecution of this matter, including reasonable attorney's fees and court costs.*
- (3) *Any civil penalties imposed may be in addition to any other remedy or penalty imposed in this subtitle.*

➔SECTION 10. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *The executive director may enter into a consent order with another person at any time for the purpose of resolving a matter arising under this subtitle. A consent order shall be signed by the person to whom it is issued or by the person's authorized representative and shall indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this subtitle, or an administrative regulation promulgated under this subtitle, or an order issued under this subtitle has been violated.*
- (2) *Any consent order that the executive director enters into to resolve a matter arising under this subtitle shall be deemed an administrative action and a public record.*

➔SECTION 11. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

*The executive director may stay, suspend, or postpone the effective date of an order issued under this subtitle, pending the administrative proceeding and the issuance of a final order resulting from the proceeding, upon written request by the affected person or licensee.*

➔SECTION 12. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

*In addition to the requirements contained in this subtitle, every licensee shall comply with all applicable federal and state laws.*

➔SECTION 13. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *Every licensee required to register with the United States Treasury Financial Crimes Enforcement Network shall file with the executive director all reports by federal currency reporting, recordkeeping, and suspicious transaction reporting requirements as set forth in the Bank Secrecy Act, 31 U.S.C. secs. 5311 to 5332, 31 C.F.R. pt. 103, and other federal and state laws pertaining to money laundering, for every transaction in this state. Every licensee required to register with the United States Treasury Financial Crimes Enforcement Network shall maintain copies of these reports in its records in compliance with Section 15 of this Act, or for a time period longer than allowed by Section 15 of this Act, where federal law prescribes.*
- (2) *The timely filing with the appropriate federal agency of a complete and accurate report required under subsection (1) of this section is deemed to be in compliance with the requirements of subsection (1) of this section, unless the executive director notifies the licensee that reports of the type required in subsection (1) of this section are not being regularly and comprehensively transmitted to the federal agency.*

➔SECTION 14. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

*Every person licensed under this subtitle shall maintain an agent in this Commonwealth for service of process. The name, address, telephone number, and electronic mail address of the agent shall be filed with the application. The executive director shall be notified in writing by the licensee at least five (5) days prior to any change in the status of an agent.*

➔SECTION 15. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *Each licensee shall keep and use in its business any books, accounts, financial reports, and records the executive director may require to administer and regulate the provisions of this subtitle and the administrative regulations promulgated under this subtitle. Every licensee shall preserve the books, accounts, financial reports, and records for a minimum of three (3) years, unless applicable state or federal law requires a longer retention period.*
- (2) *Records required to be preserved under this section may be maintained in an electronic retrievable format, or other similar form of medium, provided that it is readily accessible to examination, investigation, and inspection by the executive director.*
- (3) *Any person who ceases operating a business licensed under this subtitle shall, at least thirty (30) days prior to the discontinuance of the business, notify the executive director in writing of the physical location where the records required to be kept under this subtitle will be preserved or archived. The records shall be made accessible to the executive director upon five (5) business days' written notice.*
- (4) *Any person who ceases operating as a business licensed under this subtitle shall designate a custodian of records and notify the executive director of the name, physical address, electronic mail address, and telephone number of the custodian of records. The custodian of records shall preserve all records required under this subtitle and allow the executive director access to the records for examination and investigation upon demand.*
- (5) *The executive director may approve a written request for the destruction of records required to be preserved under this subtitle prior to the minimum retention period described in subsection (1) of this section.*

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *The executive director may enter an emergency order suspending, conditioning, limiting, or restricting a license issued under this subtitle without notice or hearing if it appears upon grounds satisfactory to the executive director that the licensee has engaged or is engaging in unsafe, unsound, or illegal practices that pose an imminent threat to the public interest.*
- (2) *One (1) or more of the following circumstances shall be considered sufficient grounds for an emergency order under this section if it appears on grounds satisfactory to the executive director that:*
  - (a) *The licensee does not meet or has failed to comply with more than one (1) of the requirements of this subtitle and the violations appear to be willful;*
  - (b) *The licensee is in such financial condition that it cannot continue in business with safety to its customers;*
  - (c) *The licensee has been indicted, charged with, or found guilty of any act involving fraud, deception, theft, or breach of trust, or is the subject of an administrative cease-and-desist order or similar order, or of a permanent or temporary injunction currently in effect entered by any court or agency of competent jurisdiction;*
  - (d) *The licensee has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the course of doing business, or has engaged in any course of business that has worked or tended to work a fraud or deceit upon any person or would so operate;*
  - (e) *The licensee has refused to permit an examination, or has refused or failed, within a reasonable time, to furnish any information or make any report that may have been requested or required by the executive director in connection with an investigation or examination;*
  - (f) *The licensee has had any license, registration, or claim of exemption related to the financial services industry denied, suspended, or revoked under the laws of this state or any other state of the United States, or has surrendered or terminated any license, registration, or claim of exemption issued by this state or any other jurisdiction under threat of administrative action; or*
  - (g) *The deposit required under Section 6(1) of this Act has terminated, expired, or otherwise no longer remains in effect.*

- (3) *An emergency order issued under this section becomes effective when signed by the executive director. The emergency order shall be delivered by personal delivery or certified mail to the last known address of the person. The order shall be deemed served upon delivery or upon return of the order.*
- (4) *A party aggrieved by an emergency order issued by the executive director under this section may request an emergency hearing. The request for hearing shall be filed with the executive director within twenty (20) days of service of the emergency order.*
- (5) *Upon receipt of a written request for an emergency hearing, the executive director shall conduct an emergency hearing as required under KRS 13B.125, within ten (10) working days from the date of receipt of the request for hearing, unless the parties agree otherwise.*
- (6) *An emergency order issued under this section shall remain in effect until it is stayed, withdrawn, or superseded by an order of the executive director or until it is terminated by a court order.*

➔Section 17. KRS 286.9-104 is amended to read as follows:

- (1) Each licensee shall file an annual report with the executive director by ~~March~~~~September~~ 1 of each year, containing the following information:
  - (a) The names and addresses of each person owning a controlling interest in each license;
  - (b) The location of all places of business operated by the licensee and the nature of the business conducted at each location;
  - (c) The names and addresses of all affiliated entities regulated under *this subtitle*~~[KRS 286.9-010 to 286.9-120]~~ and doing business in this state;
  - (d) Balance sheets, statement of income and expenses, and other statistical information as may be reasonably required by the executive director, consistent with generally accepted accounting practices, for the purpose of determining the general results of operations under this subtitle; and
  - (e) If the licensee is a corporation, the names and addressees of its *principal*~~[principle]~~ officers and directors;~~[c]~~ or if the licensee is a partnership, the names and addresses of the partners;~~[c]~~ or if the licensee is a limited liability company, the names and addresses of the board of directors of the limited liability company.
- (2) If the licensee holds two (2) or more licenses or is affiliated with other licensees, a composite report may be filed.
- (3) All reports shall be filed in a form as may reasonably be required by the executive director and shall be sworn to by a responsible officer of the licensee.
- (4) The information submitted by licensees under this section shall be held in confidence by the office and the executive director.

➔Section 18. KRS 286.9-120 is amended to read as follows:

- (1) *The executive director may file an administrative complaint against any person if it appears on grounds satisfactory to the executive director that a potential or actual violation of this subtitle has been committed and when the person may be subject to the penalties of Sections 5, 9 and 23 of this Act. The executive director shall serve the administrative complaint to the last known address of the person named in the complaint. Service shall be by certified mail or personal delivery. The person named in the administrative complaint shall be entitled to an administrative hearing conducted in accordance with KRS Chapter 13B but only upon timely receipt of a written answer and request for an administrative hearing within twenty (20) days of the mailing or hand delivery of the administrative complaint. If timely requested, an administrative hearing shall be held in accordance with the provisions of KRS Chapter 13B. If an answer is not timely filed, or a written request for a hearing is not timely filed, the executive director may enter a final order.*
- (2) No license shall be denied, *limited, conditioned, restricted, probated*, suspended, or revoked unless the applicant or licensee is afforded the opportunity for a hearing to be conducted in accordance with KRS Chapter 13B.

➔Section 19. KRS 286.9-090 is amended to read as follows:

- (1) The *executive director*~~[office]~~ may adopt reasonable administrative regulations, not inconsistent with law, for the enforcement of *this subtitle*~~[KRS 286.9-010 to 286.9-120]~~.
- (2) To assure compliance with the provisions of *this subtitle*~~[KRS 286.9-010 to 286.9-120]~~, the *executive director*~~[office]~~ may examine the business, books, and records of any licensee, and each licensee shall pay an examination fee sufficient to cover the cost of the examination based upon fair compensation for time and actual expense as established by *order or* administrative regulations~~[of the office]~~.
- (3) *The affairs of every check cashing and deferred deposit service business licensee and the records required to be maintained by Section 15 of this Act are subject at any time, or from time to time, to such periodic, special, or other examinations by the executive director or an examiner of the executive director within or without this state and with or without notice to the licensee, as the executive director deems necessary or appropriate in the public interest. All books, papers, and records of assets of the licensee shall be subject to the executive director's inspection.*
- (4) *Reports of examination, related working papers, or other confidential information in the possession or control of the executive director that is provided according to this subtitle shall be confidential by law and privileged, and shall not be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. These reports of examination, related working papers, or other confidential information shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any civil action, unless after notice to the executive director and a hearing, a court of competent jurisdiction determines that the executive director would not be prejudiced. However, the executive director may use such reports, working papers, and other confidential information in the furtherance of any regulatory or legal action brought as a part of the executive director's official duties.*
- (5) *Neither the executive director nor any person who received documents, materials, reports, or other information while acting under the authority of the executive director shall be required to testify in any civil action concerning any reports of examination, related working papers, or other confidential information subject to subsection (4) of this section.*
- (6) *In order to assist in the performance of the executive director's duties, the executive director may:*
  - (a) *Share documents, materials, annual reports, reports of examination or other information, including the confidential and privileged documents, materials, reports, or information subject to subsections (4) and (5) of this section, with other state, federal, and international regulatory agencies, and with local, state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, reports, or other information;*
  - (b) *Receive documents, materials, reports, or other information, including otherwise confidential and privileged documents, materials, reports, or information from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential and privileged any documents, materials, reports, or information received with notice or the understanding that they are confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, reports, or information;*
  - (c) *Enter into agreements governing the sharing and use of information, including the furtherance of any regulatory or legal action brought as part of the recipient's official duties;*
  - (d) *Disclose to the public a list of persons licensed under this subtitle or the aggregate financial data concerning those licensees; and*
  - (e) *Disclose to the public any order issued under this subtitle that is the result of an administrative or legal action against a licensee, agent of a licensee, responsible individual, key shareholder, executive officer, or director.*
- (7) *No waiver of any applicable privilege or claim of confidentiality in the documents, materials, reports, or information shall occur as a result of disclosure to the executive director under this subsection or as a result of sharing as authorized in subsection (6) of this section.*

➔Section 20. KRS 286.9-075 is amended to read as follows:

- (1) Any person aggrieved by the conduct of a licensee under *this subtitle*~~[KRS 286.9-010 to 286.9-120]~~ in connection with the licensee's regulated activities may file a written complaint with the executive director who may investigate the complaint.

- (2) In the course of the investigation initiated by a complaint or by the executive director, the executive director may:
  - (a) Subpoena witnesses;
  - (b) Administer oaths;
  - (c) Examine any individual under oath; and
  - (d) Compel the production of records, books, papers, contracts, or other documents relevant to the investigation.
- (3) If any person fails to testify or to comply with a subpoena from the executive director under this section, the executive director may petition any court of competent jurisdiction for enforcement.
- (4) The license of any licensee under *this subtitle* ~~[KRS 286.9-010 to 286.9-120]~~ who fails to comply with a subpoena of the executive director may be suspended pending compliance with the subpoena.
- (5) The executive director shall have administrative power to investigate all complaints filed by any person if the complaints are not criminal in nature and if they relate to the check cashing or the deferred deposit service business.

➔Section 21. KRS 286.9-030 is amended to read as follows:

The provisions of *this subtitle* ~~[KRS 286.9-010 to 286.9-120]~~ shall not apply to:

- (1) Any bank, trust company, savings and loan association, savings bank, credit union, consumer loan company, or industrial loan corporation which is chartered, licensed, or organized under the laws of this Commonwealth or under federal law and authorized to do business in this Commonwealth;
- (2) Any person who cashes checks without receiving, directly or indirectly, any consideration or fee therefor; ~~and~~
- (3) Any person principally engaged in the retail sale of goods or services who, either as an incident to or independently of a retail sale, may from time to time cash checks for a fee or other consideration.
- (4) *The United States and any department, agency, or instrumentality thereof; and*
- (5) *A state or any agency, department, or political subdivision of a state.*

➔Section 22. KRS 286.9-102 is amended to read as follows:

- (1) Each licensee who engages in deferred deposit transactions shall give the customer the disclosures *in writing* required by the Consumer Credit Protection Act (15 U.S.C. sec. 1601). Proof of this disclosure shall be made available to the *executive director* ~~[office]~~ upon request.
- (2) Each licensee shall conspicuously display a schedule of all fees, and charges for all services provided by the licensee that are authorized by *this subtitle* ~~[KRS 286.9-010 to 286.9-120]~~. The notice shall be posted at *each location where a licensee conducts its business under this subtitle* ~~[the office and every branch office of the licensee]~~.
- (3) A licensee may charge, collect, and receive check collection charges made by a financial institution for each check returned or dishonored for any reason, provided that the terms and conditions upon which check collection charges will be charged to the customer are set forth in *advance in* the written disclosure.
- (4) Any personal check accepted from a customer must be payable to the licensee.
- (5) Before a licensee shall present for payment or deposit a check accepted by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.

➔SECTION 23. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

*The executive director shall not issue additional deferred deposit service business licenses for a period of ten (10) years after July 1, 2009.*

➔Section 24. KRS 286.9-990 is amended to read as follows:

- (1) Any person who *intentionally violates any provision of this subtitle, or violates any administrative regulation promulgated hereunder, or violates any order of the executive director, shall be guilty of a Class A misdemeanor. Each transaction in violation of this subtitle and each day that a violation continues shall constitute a separate offense.*
- (2) *This section shall not be deemed to limit the power of the executive director to enforce any of the administrative penalties found in this subtitle.*
- (3) *For purposes of this section, "payment instrument" also includes debit authorization, electronic funds transfer, and any other form of electronic transmission of money*~~[directly or through another violates or attempts to violate any provision of KRS 286.9 010 to 286.9 120 shall be guilty of a misdemeanor, and shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned in the county jail for not more than twelve (12) months, or both. Each transaction in violation of KRS 286.9 010 to 286.9 120 and each day that a violation continues shall be a separate offense].~~

➔Section 25. Sections 1 through 7 and Sections 9 through 24 of this Act take effect January 1, 2010.

**Signed by the Governor March 25, 2009.**

## CHAPTER 99

### (HB 236)

AN ACT relating to Internet protocol television.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 136.602 is amended to read as follows:

As used in KRS 136.600 to 136.660:

- (1) "Cable service" means the provision of video, audio, or other programming service to purchasers, and the purchaser interaction, if any, required for the selection or use of the video or other programming service, regardless of whether the programming is transmitted over facilities owned or operated by the provider or by one (1) or more other communications service providers. Included in this definition are basic, extended, and premium service, pay-per-view service, digital or other music services, and other similar services;
- (2) "Communications service" means the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information signals of the purchaser's choosing to a point or between or among points specified by the purchaser, by or through any electronic, radio, light, fiber-optic, or similar medium or method now in existence or later devised.
- (a) "Communications service" includes but is not limited to:
1. Local and long-distance telephone services;
  2. Telegraph and teletypewriter services;
  3. Prepaid calling services, and postpaid calling services;
  4. Private communications services involving a direct channel specifically dedicated to a customer's use between specific points;
  5. Channel services involving a path of communications between two (2) or more points;
  6. Data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method;
  7. Caller ID services, ring tones, voice mail and other electronic messaging services;
  8. Mobile telecommunications service as defined in 4 U.S.C. sec. 124(7); and
  9. Voice over Internet Protocol (VOIP);
- (b) "Communications services" does not include information services~~[, cable service,]~~ or *multichannel video programming*~~[satellite broadcast and wireless cable]~~ service;
- (3) "Department" means the Department of Revenue;

- (4) "End user" means the person who utilized the multichannel video programming service. In the case of an entity, "end user" means the individual who used the service on behalf of the entity;
- (5) "Engaged in business" means:
- (a) Having any employee, representative, agent, salesman, canvasser, or solicitor operating in this state, under the authority of the provider, its subsidiary, or related entity, for the purpose of selling, delivering, taking orders, or performing any activities that help establish or maintain a marketplace for the provider;
  - (b) Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through a subsidiary or any other related entity, agent or representative, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business;
  - (c) Having real or tangible personal property in this state;
  - (d) Providing communications service by or through a customer's facilities located in this state;
  - (e) Soliciting orders from residents of this state on a continuous, regular, or systematic basis in which the solicitation of the order, placement of the order by the customer or payment of the order utilizes the services of any financial institution, communications system, radio or television station, cable service, direct broadcast satellite or wireless cable service, print media, or other facility or service located in this state; or
  - (f) Soliciting orders from residents of this state on a continuous regular, systematic basis if the provider benefits from an agent or representative operating in this state under the authority of the provider to repair or service tangible personal property sold by the retailer;
- (6) "Gross revenues" means all amounts received in money, credits, property, or other money's worth in any form, by a provider for furnishing multichannel video programming service or communications service in this state excluding amounts received from:
- (a) Charges for Internet access as defined in 47 U.S.C. sec. 151; and
  - (b) Any excise tax, sales tax, or similar tax, fee, or assessment levied by the United States or any state or local political subdivision upon the purchase, sale, use, or other consumption of communications services or multichannel video programming services that is permitted or required to be added to the sales price of the communications service or multichannel video programming service. This exclusion does not include any amount that the provider has retained as a reimbursement for collecting and remitting the tax to the appropriate taxing jurisdiction in a timely manner;
- (7) "In this state" means within the exterior limits of the Commonwealth of Kentucky and includes all territory within these limits owned by or ceded to the United States of America;
- (8) "Multichannel video programming service" means ***programming provided by or generally considered comparable to programming provided by a television broadcast station and shall include but not be limited to:***
- (a) Cable service;~~{and}~~
  - (b) Satellite broadcast and wireless cable service; ***and***
  - (c) ***Internet protocol television provided through wireline facilities without regard to delivery technology;***
- (9) "Person" means and includes any individual, firm, corporation, joint venture, association, social club, fraternal organization, general partnership, limited partnership, limited liability partnership, limited liability company, nonprofit entity, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit;
- (10) "Place of primary use" means the street address where the end user's use of the multichannel video programming service primarily occurs;
- (11) "Political subdivision" means a city, county, urban-county government, consolidated local government, or charter county government;
- (12) "Provider" means any person receiving gross revenues for the provision of multichannel video programming service or communications service in this state;

- (13) "Purchaser" means the person paying for multichannel video programming service;
- (14) "Resale" means the purchase of a multichannel video programming service by a provider required to collect the tax levied by KRS 136.604 for sale, or incorporation into a multichannel video programming service for sale, including but not limited to:
- (a) Charges paid by multichannel video programming service providers for transmission of video or other programming by another provider over facilities owned or operated by the other provider; and
  - (b) Charges for use of facilities for providing or receiving multichannel video programming services;
- (15) "Retail purchase" means any purchase of a multichannel video programming service for any purpose other than resale;
- (16) "Ring tones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication;
- (17) "Sale" means the furnishing of a multichannel video programming service for consideration;
- (18) (a) "Sales price" means the total amount billed by or on behalf of a provider for the sale of multichannel video programming services in this state valued in money, whether paid in money or otherwise, without any deduction on account of the following:
1. Any charge attributable to the connection, movement, change, or termination of a multichannel video programming service; or
  2. Any charge for detail billing;
- (b) "Sales price" does not include any of the following:
1. Charges for installation, reinstallation, or maintenance of wiring or equipment on a customer's premises;
  2. Charges for the sale or rental of tangible personal property;
  3. Charges for billing and collection services provided to another multichannel video programming service provider;
  4. Bad check charges;
  5. Late payment charges;
  6. Any excise tax, sales tax, or similar tax, fee, or assessment levied by the United States or any state or local political subdivision, upon the purchase, sale, use, or consumption of any multichannel video programming service, that is permitted or required to be added to the sales price of the multichannel video programming service; or
  7. Internet access as defined in 47 U.S.C. sec. 151;
- (19) "Satellite broadcast and wireless cable service" means point-to-point or point-to-multipoint distribution services that include but are not limited to direct broadcast satellite service and multichannel multipoint distribution services, with programming or voice transmitted or broadcast by satellite, microwave, or any other equipment directly to the purchaser. Included in this definition are basic, extended, and premium service, pay-per-view service, digital or other music services, two (2) way service, and other similar services;
- (20) "School district" means a school district as defined in KRS 160.010 and 160.020; and
- (21) "Special district" means a special district as defined in KRS 65.005(1)(a) that currently levies on any provider or its customers the public service corporation property tax under KRS 136.120.

➔Section 2. KRS 160.603 is amended to read as follows:

No school district board of education shall levy any of the school taxes authorized by KRS 160.593 to 160.597, 160.601 to 160.633, and 160.635 to 160.648, except the levy required by KRS 160.614(3) **and (6)**, until after compliance with the following:

- (1) The school district board of education desiring to levy any one (1) of these taxes shall give notice of any proposed levy of one (1) of the school taxes. Notwithstanding any statutory provisions to the contrary, notice shall be given by causing to be published, at least one (1) time in a newspaper of general circulation published

in the county or by posting at the courthouse door if there be no such newspaper, the fact that such levy is being proposed. The advertisement shall state that the district board of education will meet at a place and on a day fixed in the advertisement, not earlier than one (1) week and not later than two (2) weeks from the date of the advertisement, for the purpose of hearing comments and complaints regarding the proposed increase and explaining the reasons for such proposal.

- (2) The school district board of education shall conduct a public hearing at the place and on the date advertised for the purpose of hearing comments and complaints regarding the proposed levy and explaining the reasons for such proposal.
- (3) In the event that a combined taxing district desires to levy any one (1) of these taxes, the boards of education shall make a joint advertisement and hold a joint hearing in the manner prescribed heretofore for an individual school district.

➔Section 3. KRS 160.6131 is amended to read as follows:

As used in KRS 160.613 to 160.617:

- (1) "Department" means the Department of Revenue;
- (2) "Communications service" means the provision, transmission, conveyance, or routing, for consideration, of voice, data, video, or any other information signals of the purchaser's choosing to a point or between or among points specified by the purchaser, by or through any electronic, radio, light, fiber optic, or similar medium or method now in existence or later devised.
  - (a) "Communications service" includes but is not limited to:
    1. Local and long-distance telephone services;
    2. Telegraph and teletypewriter services;
    3. Postpaid calling services;
    4. Private communications services involving a direct channel specifically dedicated to a customer's use between specific points;
    5. Channel services involving a path of communications between two (2) or more points;
    6. Data transport services involving the movement of encoded information between points by means of any electronic, radio, or other medium or method;
    7. Caller ID services, ring tones, voice mail, and other electronic messaging services;
    8. Mobile wireless telecommunications service and fixed wireless service as defined in KRS 139.195; and
    9. Voice over Internet Protocol (VOIP).
  - (b) "Communications service" does not include any of the following if the charges are separately itemized on the bill provided to the purchaser:
    1. Information services;
    2. Internet access as defined in 47 U.S.C. sec. 151;
    3. Installation, reinstallation, or maintenance of wiring or equipment on a customer's premises. This exclusion does not apply to any charge attributable to the connection, movement, change, or termination of a communications service;
    4. The sale of directory and other advertising and listing services;
    5. Billing and collection services provided to another communications service provider;
    6. Cable service, satellite broadcast, satellite master antenna television, ~~and~~ wireless cable service, including direct-to-home satellite service as defined in Section 602 of the federal Telecommunications Act of 1996, **and Internet protocol television provided through wireline facilities without regard to delivery technology;**

7. The sale of communications service to a communications provider that is buying the communications service for sale or incorporation into a communications service for sale, including:
    - a. Carrier access charges, excluding user access fees;
    - b. Right of access charges;
    - c. Interconnection charges paid by the provider of mobile telecommunications services or other communications providers;
    - d. Charges for the sale of unbundled network elements as defined in 47 U.S.C. sec. 153(29) on January 1, 2001, to which access is provided on an unbundled basis in accordance with 47 U.S.C. sec. 251(c)(3); and
    - e. Charges for use of facilities for providing or receiving communications service;
  8. The sale of communications services provided to the public by means of a pay phone;
  9. Prepaid calling services and prepaid wireless calling service;
  10. Interstate telephone service, if the interstate charge is separately itemized for each call; and
  11. If the interstate calls are not itemized, the portion of telephone charges identified and set out on the customer's bill as interstate as supported by the provider's books and records;
- (3) "Gross cost" means the total cost of utility services including the cost of the tangible personal property and any services associated with obtaining the utility services regardless from whom purchased;
  - (4) "Gross receipts" means all amounts received in money, credits, property, or other money's worth in any form, as consideration for the furnishing of utility services;
  - (5) "Utility services" means the furnishing of communications services, electric power, water, and natural, artificial, and mixed gas;
  - (6) "Cable service" has the same meaning as provided in KRS 136.602;
  - (7) "Satellite broadcast and wireless cable service" has the same meaning as provided in KRS 136.602;~~and~~
  - (8) "Ring tones" has the same meaning as provided in KRS 136.602; *and*
  - (9) ***"Multichannel video programming service" has the same meaning as in Section 1 of this Act.***

➔Section 4. KRS 160.614 is amended to read as follows:

    - (1) A utility gross receipts license tax initially levied by a school district board of education on or after July 13, 1990, shall be levied on the gross receipts derived from the furnishing of cable service in addition to the gross receipts derived from the furnishing of the utility services defined in KRS 160.6131.
    - (2) A utility gross receipts license tax initially levied by a school district board of education prior to July 13, 1990, shall be levied on the gross receipts derived from the furnishing of cable service, in addition to the gross receipts derived from the furnishing of the utility services defined in KRS 160.6131, if the school district board of education repeats the notice and hearing requirements of KRS 160.603, but only as to the levy of the tax on the gross receipts derived from the furnishing of cable service.
    - (3) A utility gross receipts license tax initially levied by a school district board of education on or after July 1, 2005, shall include the gross receipts derived from the furnishing of direct satellite broadcast and wireless cable service in addition to the gross receipts derived from the furnishing of utility services defined in KRS 160.6131 and cable service.
    - (4) Any school district that has cable service included in the base of a utility gross receipts tax levied prior to July 1, 2005, shall, as of July 1, 2005, include gross receipts derived from the furnishing of direct satellite broadcast and wireless cable service in the base of its utility gross receipts tax at the same rate as applied to cable service, unless the school district board of education chooses to opt out of this requirement by following the procedures set forth in subsection (5) of this section.
    - (5) Any school district board of education may elect to opt out of the base expansion required by subsection (4) of this section. However, any district electing to opt out of the provisions of subsection (4) of this section shall also remove from the base of its utility gross receipts tax all gross receipts from the furnishing of cable service.

To opt out of the provisions of subsection (4) of this section, a school district board of education shall, before May 1, 2005:

- (a) Determine the amount of revenue that will be lost from removing gross receipts of cable service from the base of the utility gross receipts tax, and how that revenue will be replaced; and
- (b) Provide written notice of the intent to opt out of the base expansion required by subsection (4) of this section to the Department of Revenue, the Department of Education, all cable service providers operating in the district, and the public.
  1. Notice to the public shall be accomplished through the publication at least one (1) time in a newspaper of general circulation in the county, or by a posting at the courthouse door if there is no such newspaper, of the fact that the district board has elected to opt out of the base expansion required by subsection (4) of this section. The notice shall include the following information:
    - a. The amount of revenue that will be lost from removing gross receipts of cable service from the base of the utility gross receipts tax and how that revenue will be replaced; and
    - b. The date, time, and location of a meeting of the board, not earlier than one (1) week or later than two (2) weeks from the date of the notice, for the purpose of hearing comments regarding the proposed action of the board, and explaining the reasons for the proposed action.
  2. The board of education shall conduct a public hearing at the place and on the date and time provided in the notice for the purpose of hearing comments regarding the proposed action of the board, and explaining the reasons for the proposed action.

(6) *A utility gross receipts license tax initially levied by a school district board of education on or after July 1, 2009, shall include the gross receipts derived from the furnishing of multichannel video programming service in addition to the gross receipts derived from the furnishing of utility services.*

(7) *Any school district board of education that has cable service and direct satellite broadcast and wireless cable service included in the base of a utility gross receipts tax levied prior to July 1, 2009, shall, as of July 1, 2009, include gross receipts derived from the furnishing of Internet protocol television service provided through wireline facilities without regard to delivery technology, in the base of its utility gross receipts tax at the same rate as applied to cable service and direct satellite broadcast and wireless cable service.*

➔Section 5. This Act takes effect July 1, 2009.

**Signed by the Governor March 25, 2009.**

## CHAPTER 100

### (HB 315)

AN ACT relating to crimes and punishments.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 510.155 is amended to read as follows:

- (1) It shall be unlawful for any person to knowingly use a communications system, including computers, computer networks, computer bulletin boards, cellular telephones, or any other electronic means, for the purpose of procuring or promoting the use of a minor, or a peace officer posing as a minor if the person believes that the peace officer is a minor or is wanton or reckless in that belief, for any activity in violation of KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, ***510.110***, 529.100 where that offense involves commercial sexual activity, or 530.064(1)(a), or KRS Chapter 531.
- (2) No person shall be convicted of this offense and an offense specified in KRS 506.010, 506.030, 506.040, or 506.080 for a single course of conduct intended to consummate in the commission of the same offense with the same minor or peace officer.
- (3) ***The solicitation of a minor through electronic communication under subsection (1) of this section shall be prima facie evidence of the person's intent to commit the offense even if the meeting did not occur.***

(4) *This section shall apply to electronic communications originating within or received within the Commonwealth.*

(5) A violation of this section is punishable as a Class D felony.

➔Section 2. KRS 508.130 is amended to read as follows:

As used in KRS 508.130 to 508.150, unless the context requires otherwise:

- (1) (a) To "stalk" means to engage in an intentional course of conduct:
  1. Directed at a specific person or persons;
  2. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and
  3. Which serves no legitimate purpose.
- (b) The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.
- (2) "Course of conduct" means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. *One (1) or more of these acts may include the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device.* Constitutionally protected activity is not included within the meaning of "course of conduct." If the defendant claims that he was engaged in constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence.
- (3) "Protective order" means:
  - (a) An emergency protective order or domestic violence order issued under KRS 403.715 to 403.785;
  - (b) A foreign protective order, as defined in KRS 403.7521(1);
  - (c) An order issued under KRS 431.064;
  - (d) A restraining order issued in accordance with KRS 508.155; and
  - (e) Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender.

➔Section 3. KRS 531.010 is amended to read as follows:

As used in this chapter:

- (1) "Distribute" means to transfer possession of, whether with or without consideration.
- (2) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, *live image transmitted over the Internet or other electronic network*, or other pictorial representation or any statue or other figure, or any recording transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines, or materials.
- (3) "Obscene" means:
  - (a) To the average person, applying contemporary community standards, the predominant appeal of the matter, taken as a whole, is to prurient interest in sexual conduct; and
  - (b) The matter depicts or describes the sexual conduct in a patently offensive way; and
  - (c) The matter, taken as a whole, lacks serious literary, artistic, political, or scientific value.
- (4) "Sexual conduct" means acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse; or physical contact with the genitals, flagellation, or excretion for the purpose of sexual stimulation or gratification.

➔Section 4. KRS 531.300 is amended to read as follows:

As used in KRS 531.080 and 531.310 to 531.370:

- (1) "Distribute" means to transfer possession of, whether with or without consideration;

- (2) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, *live image transmitted over the Internet or other electronic network*, or other pictorial representation or any statue or other figure, or any recording transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines, or materials;
- (3) "Obscene" means the predominate appeal of the matter taken as a whole is to a prurient interest in sexual conduct involving minors;
- (4) "Sexual conduct by a minor" means:
  - (a) Acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse, actual or simulated;
  - (b) Physical contact with, or willful or intentional exhibition of the genitals;
  - (c) Flagellation or excretion for the purpose of sexual stimulation or gratification; or
  - (d) The exposure, in an obscene manner, of the unclothed or apparently unclothed human male or female genitals, pubic area or buttocks, or the female breast, whether or not subsequently obscured by a mark placed thereon, or otherwise altered, in any resulting motion picture, photograph or other visual representation, exclusive of exposure portrayed in matter of a private, family nature not intended for distribution outside the family;
- (5) "Performance" means any play, motion picture, photograph or dance. Performance also means any other visual representation exhibited before an audience;
- (6) "Sexual performance" means any performance or part thereof which includes sexual conduct by a minor; and
- (7) "Promote" means to prepare, publish, print, procure or manufacture, or to offer or agree to do the same.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 17.500 TO 17.580 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Instant messaging or chat room program," means a software program that allows two (2) or more persons to communicate over the Internet in real time using typed text; and*
- (b) *"Social networking Web site," means an Internet Web site that:*
  - 1. *Facilitates the social introduction between two (2) or more persons;*
  - 2. *Allows a person to create a Web page or a personal profile; and*
  - 3. *Provides a person who visits the Web site the opportunity to communicate with another person.*
- (2) *No registrant, as defined in KRS 17.500, shall knowingly or intentionally use a social networking Web site or an instant messaging or chat room program if that Web site or program allows a person who is less than eighteen (18) years of age to access or use the Web site or program.*
- (3) *Any person who violates subsection (2) of this section shall be guilty of a Class A misdemeanor.*

➔Section 6. KRS 17.510 is amended to read as follows:

- (1) The cabinet shall develop and implement a registration system for registrants which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.
- (2) A registrant shall, on or before the date of his or her release by the court, the parole board, the cabinet, or any detention facility, register with the appropriate local probation and parole office in the county in which he or she intends to reside. The person in charge of the release shall facilitate the registration process.
- (3) Any person required to register pursuant to subsection (2) of this section shall be informed of the duty to register by the court at the time of sentencing if the court grants probation or conditional discharge or does not impose a penalty of incarceration, or if incarcerated, by the official in charge of the place of confinement upon release. The court and the official shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register has been explained to the person. The court and the official in charge of the place of confinement shall require the releasee to complete the acknowledgment form

and the court or the official shall retain the original completed form. The official shall then send the form to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.

- (4) The court or the official shall order the person to register with the appropriate local probation and parole office which shall obtain the person's fingerprints, DNA sample, and photograph. Thereafter, the registrant shall return to the appropriate local probation and parole office not less than one (1) time every two (2) years in order for a new photograph to be obtained, and the registrant shall pay the cost of updating the photo for registration purposes. Any registrant who has not provided a DNA sample as of July 1, 2008, shall provide a DNA sample to the appropriate local probation and parole office when the registrant appears for a new photograph to be obtained. Failure to comply with this requirement shall be punished as set forth in subsection (11) of this section.
- (5)
  - (a) The appropriate probation and parole office shall send the registration form containing the registrant information, fingerprint card, and photograph, and any special conditions imposed by the court or the Parole Board, to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601. The appropriate probation and parole office shall send the DNA sample to the Department of Kentucky State Police forensic laboratory in accordance with administrative regulations promulgated by the cabinet.
  - (b) The Information Services Center, upon request by a state or local law enforcement agency, shall make available to that agency registrant information, including a person's fingerprints and photograph, where available, as well as any special conditions imposed by the court or the Parole Board.
  - (c) Any employee of the Justice and Public Safety Cabinet who disseminates, or does not disseminate, registrant information in good faith compliance with the requirements of this subsection shall be immune from criminal and civil liability for the dissemination or lack thereof.
- (6) Any person who has been convicted in a court of any state or territory, a court of the United States, or a similar conviction from a court of competent jurisdiction in any other country, or a court martial of the United States Armed Forces of a sex crime or criminal offense against a victim who is a minor and who has been notified of the duty to register by that state, territory, or court, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws, or has a similar conviction from a court of competent jurisdiction in any other country, shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register with the appropriate local probation and parole office in the county of residence within five (5) working days of relocation. No additional notice of the duty to register shall be required of any official charged with a duty of enforcing the laws of this Commonwealth.
- (7) If a person is required to register under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register within five (5) working days with the appropriate local probation and parole office in the county of residence, employment, vocation, or schooling. A person required to register under federal law or the laws of another state or territory shall be presumed to know of the duty to register in the Commonwealth. As used in this subsection, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.
- (8) The registration form shall be a written statement signed by the person which shall include registrant information, including an up-to-date photograph of the registrant for public dissemination.
- (9) For purposes of KRS 17.500 to 17.580 and 17.991, a post office box number shall not be considered an address.
- (10)
  - (a) If the residence address of any registrant changes, but the registrant remains in the same county, the person shall register, on or before the date of the change of address, with the appropriate local probation and parole office in the county in which he or she resides.

- (b) 1. If the registrant changes his or her residence to a new county, the person shall notify his or her current local probation and parole office of the new residence address on or before the date of the change of address.
  - 2. The registrant shall also register with the appropriate local probation and parole office in the county of his or her new residence no later than five (5) working days after the date of the change of address.
  - (c) ***If the electronic mail address or any instant messaging, chat, or other Internet communication name identities of any registrant changes or if the registrant creates or uses any new Internet communication name identities, the registrant shall register the change or new identity, on or before the date of the change or use or creation of the new identity, with the appropriate local probation and parole office in the county in which he or she resides.***
  - (d) 1. As soon as a probation and parole office learns of the person's new address under paragraph (b)1. of this subsection, that probation and parole office shall notify the appropriate local probation and parole office in the county of the new address of the effective date of the new address.
  - 2. As soon as a probation and parole office learns of the person's new address under paragraph (b)2. of this subsection ***or learns of the registrant's new or changed electronic mail address or instant messaging, chat, or other Internet communication name identities under paragraph (c) of this subsection***, that office shall forward this information as set forth under subsection (5) of this section.
- (11) Any person required to register under this section who knowingly violates any of the provisions of this section or prior law is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (12) Any person required to register under this section or prior law who knowingly provides false, misleading, or incomplete information is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (13) (a) The cabinet shall verify the addresses ***and the electronic mail address and any instant messaging, chat, or other Internet communication name identities*** of individuals required to register under this section. Verification shall occur at least once every ninety (90) days for a person required to register under KRS 17.520(2) and at least once every calendar year for a person required to register under KRS 17.520(3). If the cabinet determines that a person has moved ***or has created or changed any electronic mail address or any instant messaging, chat, or other Internet communication name identities used by the person*** without providing his or her new address, ***electronic mail address, or instant message, chat, or other Internet communication name identity*** to the appropriate local probation and parole office or offices as required under subsection (10)(a), ~~and~~ (b) ***and (c)*** of this section, the cabinet shall notify the appropriate local probation and parole office of the new address ***or electronic mail address or any instant messaging, chat, or other Internet communication name identities used by the person***. The office shall then forward this information as set forth under subsection (5) of this section. The cabinet shall also notify the appropriate court, Parole Board, and appropriate Commonwealth's attorney, sheriff's office, probation and parole office, corrections agency, and law enforcement agency responsible for the investigation of the report of noncompliance.
- (b) An agency that receives notice of the noncompliance from the cabinet under paragraph (a) of this subsection:
- 1. Shall consider revocation of the parole, probation, or conditional discharge of any person released under its authority; and
  - 2. Shall notify the appropriate county or Commonwealth's Attorney for prosecution.

➔Section 7. KRS 17.580 is amended to read as follows:

- (1) The Department of Kentucky State Police shall establish a Web site available to the public. The Web site shall display:
  - (a) The registrant information, except for ***electronic mail address or any instant messaging, chat, or other Internet communication name identities included in a registrant's registration data, as well as***

information that identifies a victim, DNA samples, fingerprints, and Social Security numbers, obtained by the Information Services Center, Department of Kentucky State Police, under KRS 17.510;

- (b) The sex offender information, except for information that identifies a victim, DNA samples, Social Security numbers, and vehicle registration data, obtained by the Information Services Center, Department of Kentucky State Police, under KRS 17.510 prior to April 11, 2000; and
- (c) The registrant's conviction, the elements of the offense for which the registrant was convicted, whether the registrant is currently on probation or parole, and whether the registrant is compliant or noncompliant.

The Web site shall be updated every day except for Saturdays, Sundays, and state holidays.

- (2) The information pertaining to an individual shall be maintained on the Web site so long as that individual is registered in accordance with KRS 17.500 to 17.580.
- (3) ***The Web site shall provide public access to electronic mail addresses and any instant messaging, chat, or other Internet communication name identities used by registrants solely by use of a search function on the Web site through which members of the public may enter an electronic mail address or any instant messaging, chat, or other Internet communication name identity and receive an answer as to whether the entered identifier is included in the registrant information for any registrant.***
- (4) The following language shall be prominently displayed on the Web site: "UNDER KRS 525.070 AND 525.080, USE OF INFORMATION OBTAINED FROM THIS WEB SITE TO HARASS A PERSON IDENTIFIED ON THIS WEB SITE IS A CRIMINAL OFFENSE PUNISHABLE BY UP TO NINETY (90) DAYS IN THE COUNTY JAIL. MORE SEVERE CRIMINAL PENALTIES APPLY FOR MORE SEVERE CRIMES COMMITTED AGAINST A PERSON IDENTIFIED ON THIS WEB SITE."
- ~~(5)~~~~(4)~~ (a) Any Department of Kentucky State Police employee who disseminates, or does not disseminate, registrant information or sex offender information in good faith compliance with the requirements of this section shall be immune from criminal and civil liability for the dissemination or lack thereof.
- (b) Any person, including an employee of a sheriff's office, acting in good faith in disseminating, or not disseminating, information previously disseminated by the Department of Kentucky State Police shall be immune from criminal and civil liability for the dissemination or lack thereof.
- ~~(6)~~~~(5)~~ The cabinet shall establish a toll-free telephone number for a person to call to learn the identity of the Web site created in this section and the location of public access to the Web site in the county where the person resides.
- ~~(7)~~~~(6)~~ In addition to the Web site, a local law enforcement agency may provide personal notification regarding the registrants located in its jurisdiction. Any notification shall contain the warning specified in subsection (3) of this section.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 500 IS CREATED TO READ AS FOLLOWS:

- (1) ***Notwithstanding Section 10 of this Act, all personal property which is not used as a permanent residence in this state which is used in connection with or acquired as a result of a violation or attempted violation of any of the statutes set out in subsection (3) of this section shall be subject to forfeiture under the same terms, conditions, and defenses and using the same process as set out in KRS 218A.405 to 218A.460 for property subject to forfeiture under that chapter.***
- (2) ***Administrative regulations promulgated under KRS 218A.420 shall govern expenditures derived from forfeitures under this section to the same extent that they govern expenditures from forfeitures under KRS 218A.405 to 218A.460.***
- (3) ***The following offenses may trigger forfeiture of personal property under subsection (1) of this section:***
  - (a) ***Section 5 of this Act;***
  - (b) ***KRS 508.140 and 508.150 involving the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device;***

- (c) ***KRS 510.155;***
- (d) ***KRS 530.064(1)(a);***
- (e) ***KRS 531.030;***
- (f) ***KRS 531.040***
- (g) ***KRS 531.310;***
- (h) ***KRS 531.320;***
- (i) ***KRS 531.335;***
- (j) ***KRS 531.340;***
- (k) ***KRS 531.350;***
- (l) ***KRS 531.360; and***
- (m) ***KRS 531.370.***

➔Section 9. KRS 16.210 is amended to read as follows:

- (1) Property taken by the Department of Kentucky State Police shall be placed with the property officer of the post to which the officer is assigned.
- (2) Property which is forfeited may be disposed of as provided by KRS 500.090 ***or Section 8 of this Act, whichever is applicable***; however, the proceeds of any sale shall go to the state or be distributed as otherwise provided by law.
- (3) All other property may be disposed of as provided in KRS 67.592 and 67.594 except that all proceeds from any sale shall go to the state.

➔Section 10. KRS 500.090 is amended to read as follows:

- (1) ***Except as provided in Section 8 of this Act***, all property which is subject to forfeiture under any section of the Kentucky Penal Code shall be disposed of in accordance with this section.
  - (a) Property other than firearms which is forfeited under any section of this code may, upon order of the trial court, be destroyed by the sheriff of the county in which the conviction was obtained.
  - (b) Property other than firearms which is forfeited under any section of this code may, upon order of the trial court, be sold at public auction. The expenses of keeping and selling such property and the amount of all valid recorded liens that are established by intervention as being bona fide shall be paid out of the proceeds of the sale. The balance shall be paid to:
    1. The state, if the property was seized by an agency of the state or peace officer thereof;
    2. The county, if the property was seized by the sheriff or an agency or peace officer of the county;
    3. The Department of Fish and Wildlife Resources, if the property was seized by a peace officer of the Department of Fish and Wildlife or was seized by any other officer for violation of KRS Chapter 150;
    4. The city, if the property was seized by the city or by an agency or peace officer thereof and the property was delivered to the city property clerk;
    5. The city (ninety percent (90%) of the proceeds) and the sheriff (ten percent (10%) of the proceeds), if the property was seized by the city or by an agency or peace officer thereof and the property was delivered to the sheriff or the county police; or
    6. The state, if the property was seized by any combination of agencies listed above.
  - (c) Subject to the duty to return confiscated firearms and ammunition to innocent owners pursuant to this section, all firearms and ammunition confiscated by a state or local law enforcement agency, all firearms ordered forfeited by a court, and all abandoned firearms and ammunition coming into the custody of a state or local law enforcement agency and not retained for official use shall be transferred to the Department of Kentucky State Police for disposition as provided by KRS 16.220. The transfer shall

occur not more than ninety (90) days after the abandonment of the firearm or ammunition to the law enforcement agency or not more than ninety (90) days after its confiscation, unless a court requires the firearm or ammunition for use as evidence, in which case it shall be transferred to the Department of Kentucky State Police not more than ninety (90) days following the order of forfeiture by the court or after the court returns the firearm or ammunition from use as evidence. Prior to the sale of any firearm or ammunition, the law enforcement agency shall make a bona fide attempt to determine if the firearm or ammunition to be sold has been stolen or otherwise unlawfully obtained from an innocent owner and return the firearm and ammunition to its lawful innocent owner, unless that person is ineligible to purchase a firearm under federal law. This subsection relating to auction of firearms and ammunition shall not apply to firearms and ammunition auctioned by the Department of Fish and Wildlife that may be sold to individual purchasers residing in Kentucky who are eligible under federal law to purchase firearms and ammunition of the type auctioned.

- (d) If property which is forfeited under any section of this code is determined by the trial court to be worthless, encumbered with liens in excess of its value, or otherwise a burdensome asset, the court may abandon any interest in such property. Property which is abandoned pursuant to this section shall be returned to the lawful claimant upon payment of expenses for keeping the property.
  - (e) Property which is forfeited under any section of this code may, upon order of the trial court, be retained for official use in the following manner. Property which has been seized by an agency of the state may be retained for official state use. Property which has been seized by an agency of county, city, or urban-county government may be retained for official use by the government whose agency seized the property or for official state use. Property seized by any other unit of government may be retained only for official state use. The expenses for keeping and transferring such property shall be paid by the unit of government by which the property is retained.
- (2) Money which has been obtained or conferred in violation of any section of this code shall, upon conviction, be forfeited for the use of the state. This subsection shall not apply when, during the course of the proceeding in which the conviction is obtained, the person from whom said money was unlawfully acquired is identified.
  - (3) Property forfeited under any section of this code shall be disposed of in accordance with this section only after being advertised pursuant to KRS Chapter 424. This subsection shall not apply to property which is designed and suitable only for criminal use or to money forfeited under subsection (2) of this section.
  - (4) The trial court shall remit the forfeiture of property when the lawful claimant:
    - (a) Asserts his or her claim before disposition of the property pursuant to this section;
    - (b) Establishes his or her legal interest in the property; and
    - (c) Establishes that the unlawful use of the property was without his or her knowledge and consent. This subsection shall not apply to a lienholder of record when the trial court elects to dispose of the property pursuant to subsection (1)(b) of this section.
  - (5) For purposes of this section, "lawful claimant" means owner or lienholder of record.
  - (6) Before property which has had its identity obscured in violation of KRS 514.120 may be sold or retained for official use as provided in this section, the court shall cause a serial or other identifying number to be placed thereon, and a record of the number assigned shall be placed in the court order authorizing the sale or retention of the property. This number shall be assigned, whenever applicable, in consultation with the Department of Kentucky State Police and any other state or federal regulatory agency. The purchaser of the property shall be given a document stating that the property had been forfeited pursuant to law and that a number, shown on the document, has been assigned which shall be deemed as compliance of the owner with KRS 514.120. When property is returned to an owner pursuant to this section and its identity has been obscured by another person in violation of KRS 514.120, the court shall provide a document to the owner relieving him or her of liability for its continued possession. This document shall serve as evidence of compliance with KRS 514.120 by the owner or any person to whom he or she lawfully disposes of the property. This section shall not apply to any person after property has been sold or returned in compliance with this section who violates the provisions of KRS 514.120 with respect to that property.
  - (7) Before forfeiture of any property under this section, it shall be the duty of the trial court to determine if a lawful owner or claimant to the property has been identified or is identifiable. If a lawful owner or claimant has been identified or is identifiable, the court shall notify the owner or claimant that the property is being held and

specify a reasonable period of time during which the claim may be made or may, in lieu thereof, order the return of the property to the lawful owner or claimant. If the lawful owner or claimant does not assert his or her claim to the property after notification or if he or she renounces his or her claim to the property, the property shall be disposed of as provided in this section. It shall be the duty of all peace officers and other public officers or officials having knowledge of the lawful owner or claimant of property subject to forfeiture to report the same to the trial court before the act of forfeiture occurs.

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 500 IS CREATED TO READ AS FOLLOWS:

- (1) *In any investigation relating to an offense involving KRS 510.155, 530.064(1)(a), 531.030, 531.040, 531.310, 531.320, 531.335, 531.340, 531.350, 531.360, or 531.370, and upon reasonable cause to believe that an Internet service account has been used in the exploitation or attempted exploitation of children, or in any investigation of a violation of Section 5 of this Act, KRS 508.140, 508.150, 525.070, or 525.080 where there is reasonable cause to believe that an Internet Service Account has been used in the commission of the offense, the Attorney General may issue in writing and cause to be served a subpoena requiring the production and testimony described in subsection (2) of this section.*
- (2) *Except as provided in subsection (3) of this section, a subpoena issued under this section may require the production of any records or other documentation relevant to the investigation including:*
  1. *Electronic mail address;*
  2. *Internet username;*
  3. *Internet protocol address;*
  4. *Name of account holder;*
  5. *Billing and service address;*
  6. *Telephone number;*
  7. *Account status;*
  8. *Method of access to the Internet; and*
  9. *Automatic number identification records if access is by modem.*
- (3) *The provider of electronic communication service or remote computing service shall not disclose the following pursuant to a subpoena issued under this section but shall disclose the information in obedience to a warrant:*
  - (a) *In-transit electronic communications;*
  - (b) *Account memberships related to Internet groups, newsgroups, mailing lists or specific areas of interest;*
  - (c) *Account passwords; and*
  - (d) *Account content including:*
    1. *Electronic mail in any form;*
    2. *Address books, contacts, or buddy lists;*
    3. *Financial records;*
    4. *Internet proxy content or Web surfing history; and*
    5. *Files or other digital documents stored with the account or pursuant to use of the account.*
- (4) *At any time before the return date specified on the subpoena, the person summoned may, in the District Court in which the person resides or does business, petition for an order modifying or setting aside the subpoena, or a prohibition of disclosure by a court.*
- (5) *A subpoena under this section shall describe the objects required to be produced and shall prescribe a return date with a reasonable period of time within which the objects can be assembled and made available.*

- (6) *If no case or proceeding arises from the production of records or other documentation pursuant to this section within a reasonable time after those records or documentation are produced, the Attorney General shall either destroy the records and documentation or return them to the person who produced them.*
- (7) *A subpoena issued under this section may be served by any person who is at least eighteen (18) years of age and who is designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to him. Service may be made upon a corporation or partnership or other unincorporated association which is subject to suit under its common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena together with a true copy thereof shall be proof of service.*
- (8) *Except as provided in this section any information, records or data reported or obtained pursuant to subpoena under this section shall remain confidential and shall not be further disclosed unless in connection with a criminal case related to the subpoenaed materials.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 434 IS CREATED TO READ AS FOLLOWS:

- (1) *For purposes of this section:*
- (a) *"Electronic mail message," means a message sent to a unique destination that consists of a unique user name or mailbox and a reference to an Internet domain, whether or not displayed, to which the message can be sent or delivered; and*
- (b) *"Identifying information," means specific details that can be used to access a person's financial accounts or to obtain goods or services, including but not limited to the person's Social Security number, driver's license number, bank account number, credit or debit card number, personal identification number, automated or electronic signature, unique biometric data, or account password.*
- (2) *A person is guilty of phishing if he or she knowingly or intentionally solicits, requests, or takes any action to induce another person to provide identifying information by means of a Web page, electronic mail message, or otherwise using the Internet, by representing himself or herself either directly or by implication, to be a third person without the authority or approval of such other person.*
- (3) *In any prosecution for a violation of this section, the Commonwealth is not required to establish, and it is no defense that:*
- (a) *A person other than the defendant who violated this section has not been convicted, apprehended, or identified; or*
- (b) *Some of the acts constituting a violation of this section did not occur in Kentucky or were not a criminal offense or elements of a criminal offense where they did occur.*
- (4) *Phishing is a Class D felony.*

Signed by the Governor March 25, 2009.

## CHAPTER 101

### (SB 1)

AN ACT relating to education assessment and declaring an emergency.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 158.6451 is amended to read as follows:

- (1) The General Assembly finds, declares, and establishes that:
- (a) Schools shall expect a high level of achievement of all students.
- (b) Schools shall develop their students' ability to:
1. Use basic communication and mathematics skills for purposes and situations they will encounter throughout their lives;

2. Apply core concepts and principles from mathematics, the sciences, the arts, the humanities, social studies, and practical living studies to situations they will encounter throughout their lives;
  3. Become self-sufficient individuals of good character exhibiting the qualities of altruism, citizenship, courtesy, **hard work**, honesty, human worth, justice, knowledge, **patriotism**, respect, responsibility, and self-discipline;
  4. Become responsible members of a family, work group, or community, including demonstrating effectiveness in community service;
  5. Think and solve problems in school situations and in a variety of situations they will encounter in life;~~and~~
  6. Connect and integrate experiences and new knowledge from all subject matter fields with what they have previously learned and build on past learning experiences to acquire new information through various media sources; **and**
  7. ***Express their creative talents and interests in visual arts, music, dance and dramatic arts.***
- (c) Schools shall increase their students' rate of school attendance.
- (d) Schools shall ***increase their students' graduation rates and*** reduce their students' dropout and retention rates.
- (e) Schools shall reduce physical and mental health barriers to learning.
- (f) Schools shall be measured on the proportion of students who make a successful transition to work, post-secondary education, and the military.
- (2) The Kentucky Board of Education shall disseminate to local school districts and schools a model curriculum framework which is directly tied to the goals, outcomes, and assessment strategies developed pursuant to this section and KRS 158.645 and 158.6453. The framework shall provide direction to local districts and schools as they develop their curriculum. The framework shall identify teaching and assessment strategies, instructional material resources, ideas on how to incorporate the resources of the community, a directory of model teaching sites, alternative ways of using school time, and strategies to incorporate character education throughout the curriculum.

➔Section 2. KRS 158.6453 is amended to read as follows:

- (1) ***As used in this section:***
- (a) ***"Accelerated learning" means an organized way of helping students meet individual academic goals by providing direct instruction to eliminate student performance deficiencies or enable students to move more quickly through course requirements and pursue higher level skill development;***
  - (b) ***"Constructed response or performance based items" means individual test items that require the student to create an answer rather than select a response and may include fill-in the blank, short answer, extended answer, open response, and writing on demand formats;***
  - (c) ***"Criterion-referenced test" means a test that is aligned with defined academic content standards and measures an individual student's level of performance against the standards;***
  - (d) ***"End-of-course examination" means the same as defined in KRS 158.860;***
  - (e) ***"Formative assessment" means a process used by teachers and students during instruction to adjust ongoing teaching and learning to improve students' achievement of intended instructional outcomes. Formative assessments may include the use of commercial assessments, classroom observations, teacher-designed classroom tests and assessments, and other processes and assignments to gain information about individual student learning;***
  - (f) ***"Interim assessments" means assessments that are given periodically throughout the year to provide diagnostic information and to show individual student performance against content standards;***
  - (g) ***"National norm-referenced test" means a type of test interpretation in which the performance of student scores are reported by comparing performance to how other students in a national sample performed;***

- (h) *"Program audit" means a form of program review that is a systematic method of analyzing components of an instructional program and areas for improvement that is conducted as a result of a program review that indicates a more in-depth process of analysis and assistance is needed;*
  - (i) *"Program review" means a systematic method of analyzing components of an instructional program including instructional practices, aligned and enacted curriculum, student work samples, formative and summative assessments, professional development and support services, and administrative support and monitoring;*
  - (j) *"Summative assessment" means an assessment given at the end of the school year, semester, or other period of time to evaluate students' performance against content standards within a unit of instruction or a course; and*
  - (k) *"Writing" means a purposeful act of thinking and expression that uses language to explore ideas and communicate meaning to others. Writing is a complex, multifaceted act of communication.*
- (2) (a) *Within thirty (30) days of the effective date of this Act, the Kentucky Department of Education in collaboration with the Council on Postsecondary Education shall plan and implement a comprehensive process for revising the academic content standards in reading, language arts including writing, mathematics, science, social studies, arts and humanities, and practical living skills and career studies. The revision process shall include a graduated time table to ensure that all revisions are completed to allow as much time as possible for teachers to adjust their instruction before new assessments are administered.*
- (b) *The revisions to the content standards shall:*
1. *Focus on critical knowledge, skills, and capacities needed for success in the global economy;*
  2. *Result in fewer, but more in-depth standards to facilitate mastery learning;*
  3. *Communicate expectations more clearly and concisely to teachers, parents, students, and citizens;*
  4. *Be based on evidence-based research;*
  5. *Consider international benchmarks; and*
  6. *Ensure that the standards are aligned from elementary to high school to postsecondary education so that students can be successful at each education level.*
- (c) *The revision process, jointly organized by the commissioner of education and the president of the Council on Postsecondary Education, shall engage practicing teachers from elementary and secondary education in discussions and negotiations with content faculty and staff from postsecondary education institutions. The process shall also include business and industry professionals who are actively engaged in career fields that depend on the various content areas, and others as deemed appropriate by the commissioner and the president.*
- (d) *During the revision process the department shall consider standards that have been adopted by national content advisory groups and professional education consortia.*
- (e) *Using a variety of strategies and technologies, the proposed revisions to the academic content standards shall be widely disseminated throughout the state to elementary, secondary, and postsecondary education faculty and administrators, parents, citizens, private professionals in the content areas, and others for comment and recommendations. The results of the revision process shall ensure that the specifications in paragraph (b) of this subsection are met.*
- (f) *The commissioner of education and the president of the Council on Postsecondary Education shall ensure that the revised academic standards that are recommended to the Kentucky Board of Education for approval are aligned with postsecondary education course and assessment standards for the gateway areas of reading and mathematics. The council shall also review the proposed academic standards in all other content areas and provide written recommendations as needed to ensure those areas are aligned with postsecondary education requirements.*
- (g) 1. *The Kentucky Board of Education shall consider for approval the revisions to academic content standards for a content area as they are completed.*

2. *The Department of Education shall disseminate the academic content standards to the schools and teacher preparation programs no later than thirty (30) days after approval by the state board.*
  3. *All academic content standards revisions shall be completed and approved by the state board no later than December 15, 2010, and disseminated by the Department of Education to elementary and secondary schools, postsecondary education faculty in the respective content areas, and to all teacher preparation programs no later than January 15, 2011.*
- (h) *The Department of Education shall provide or facilitate statewide training sessions for existing teachers and administrators on how to:*
1. *Integrate the revised content standards into classroom instruction;*
  2. *Better integrate performance assessment of students within their instructional practices; and*
  3. *Help all students use higher-order thinking and communication skills.*
- (i) *The Education Professional Standards Board in cooperation with the Kentucky Board of Education and the Council on Postsecondary Education shall coordinate information and training sessions for faculty and staff in all of the teacher preparation programs in the use of the revised academic content standards. The Education Professional Standards Board shall ensure that each teacher preparation program includes use of the academic standards in the pre-service education programs and that all teacher interns after the effective date of this Act will have experience planning classroom instruction based on the revised standards.*
- (j) *The Council on Postsecondary Education in cooperation with the Kentucky Department of Education and the postsecondary education institutions in the state shall coordinate information sessions regarding the academic content standards for faculty who teach in the various content areas.*
- (3) (a) *The Kentucky Board of Education shall be responsible for creating and implementing a **balanced** statewide assessment program **that measures the students', schools', and districts'** ~~to be known as the Commonwealth Accountability Testing System to ensure school accountability for student~~ achievement of the goals set forth in KRS 158.645 and 158.6451, **to ensure compliance with the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor, and to ensure school accountability.***
- (b) *Using the revised academic standards developed pursuant to subsection (2) of this section, the board shall revise the annual statewide assessment program for implementation in the 2011-2012 academic year.*
- (c) *The board shall seek the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; **the Education Assessment and Accountability Review Subcommittee**, and the National Technical Advisory Panel on Assessment and Accountability in the development of the **assessment** program. The statewide assessment program shall not include measurement of a student's ability to become a self-sufficient individual or to become a responsible member of a family, work group, or community.*
- (4) (a) *The assessment program to be implemented in the 2011-2012 academic year shall be composed of annual student assessments and state and local program reviews and audits in selected content areas.*
- (b) *The state student assessments may include formative and summative tests that:*
1. *Measure individual student achievement in the academic core content areas of language, reading, English, mathematics, science, and social studies at designated grades;*
  2. *Provide teachers and parents a valid and reliable comprehensive analysis of skills mastered by individual students;*
  3. *Provide diagnostic information that identifies strengths and academic deficiencies of individual students in the content areas;*
  4. *Provide comparisons with national norms for mathematics, reading, social studies, and science, and where available, comparisons to other states;*

5. *Provide information to teachers that can enable them to improve instruction for current and future students;*
  6. *Provide longitudinal profiles for students; and*
  7. *Ensure school and district accountability for student achievement of the goals set forth in KRS 158.645 and 158.6451, except the statewide assessment program shall not include measurement of a student's ability to become a self-sufficient individual or to become a responsible member of a family, work group, or community.*
- (c) *The state and local program reviews and audits shall provide annual feedback to each school relating to selected programs and serve as indicators of the quality of educational experiences available to students. Program reviews and audits shall provide recommendations for improving program components in order to better teach and assess students within these programs. Program reviews shall ensure school and district accountability for student achievement of the capacities set forth in KRS 158.645 and the goals set forth in Section 1 of this Act.*
- (5) *The state student assessments to be implemented in the 2011-2012 academic year shall include the following components:*
- (a) *Elementary and middle grades requirements are:*
1. *A criterion-referenced test in mathematics and reading in grades three (3) through eight (8) that is valid and reliable for an individual student and that measures the depth and breadth of Kentucky's academic content standards, augmented with a customized or commercially available norm-referenced test to provide national profiles;*
  2. *A criterion-referenced test in science and social studies that is valid and reliable for an individual student as necessary to measure the depth and breadth of Kentucky's academic content standards, augmented with a customized or commercially available norm-referenced test to provide national profiles to be administered one (1) time within the elementary and middle grades, respectively;*
  3. *An on-demand assessment of student writing to be administered one (1) time within the elementary grades and two (2) times within the middle grades;*
  4. *An editing and mechanics test relating to writing, using multiple choice and constructed response items, to be administered one (1) time within the elementary and the middle grades, respectively; and*
  5. *A high school readiness examination to assess English, reading, mathematics, and science in grade eight (8) as provided in subsection (11) of this section; except the readiness examination may be moved to grade nine (9) by the Kentucky Board of Education based on compelling evidence that moving the test would be in the best interests of Kentucky students;*
- (b) *High school requirements are:*
1. *A criterion-referenced test in mathematics, reading, and science that is valid and reliable for an individual student and that measures the depth and breadth of Kentucky's academic content standards that are not covered in the assessment under subparagraph 6. of this paragraph to be administered one (1) time within the high school grades;*
  2. *A criterion-referenced test in social studies that is valid and reliable for an individual student as necessary to measure the depth and breadth of Kentucky's academic content standards, augmented with a customized or commercially available norm-referenced test to provide national profiles and to be administered one (1) time within the high school grades;*
  3. *An on-demand assessment of student writing to be administered two (2) times within the high school grades;*
  4. *An editing and mechanics test relating to writing, using multiple choice and constructed response items, to be administered one (1) time within the high school grades;*
  5. *A college readiness examination to assess English, reading, mathematics, and science in grade ten (10) as provided in subsection (11) of this section; and*

6. *The ACT examination to assess English, reading, mathematics, and science in grade eleven (11) as provided in subsection (11) of this section;*
- (c) *The Kentucky Board of Education shall add any other component necessary to comply with the No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor, as determined by the United States Department of Education;*
- (d) *The criterion-referenced components required in this subsection shall be composed of constructed response items and multiple choice items and the national norm-referenced components shall be composed of multiple choice items;*
- (e) *The Kentucky Board of Education may incorporate end-of-course examinations into the assessment program to be used in lieu of requirements for criterion-referenced tests required under paragraph (b) of this subsection; and*
- (f) *The results of the assessment program developed under this subsection shall be used to determine appropriate instructional modifications for all students in order for students to make continuous progress including that needed by advanced learners.*
- (6) *Beginning in the 2011-2012 academic year, each school district shall administer the statewide student assessment during the last fourteen (14) days of school in the district's instructional calendar. Testing shall be limited to no more than five (5) days. The Kentucky Board of Education shall promulgate administrative regulations outlining the procedures to be used during the testing process to ensure test security, including procedures for testing makeup days, and to comply with federal assessment requirements.*
- (7) *Beginning in the 2011-2012 academic year, the Kentucky assessment program shall include program reviews and program audits for arts and humanities, practical living skills and career studies, and the writing programs. The results of the program reviews and audits of arts and humanities, practical living skills and career studies and writing required under this subsection shall be included in the accountability system as required by Section 4 of this Act.*
  - (a) *Arts and humanities.*
    1. *The Kentucky Department of Education shall provide guidelines for arts and humanities programs and for integration of these within the curriculum to all schools.*
    2. *The Kentucky Board of Education shall establish criteria to use in the program review and audit processes, and the procedures recommended for local district and department program reviews and program audits as defined in subsection (1)(h) and (i) of this section. The department shall distribute the criteria and procedures for program reviews and audits to all schools and teacher preparation programs.*
    3. *Each local district shall do an annual program review and the Department of Education shall conduct a program review of every school's program within a two (2) year period. The frequency of program audits shall be determined by the Department of Education in compliance with the requirements established by the state board.*
    4. *Each school-based decision making council shall analyze the findings from program reviews for its school and determine how it will address program recommendations to improve the program for students.*
  - (b) *Practical living skills and career studies.*
    1. *The Kentucky Department of Education shall provide guidelines for practical living skills and career studies and integration of these within the curriculum to all schools and teacher preparation programs.*
    2. *The Kentucky Board of Education shall establish criteria to use in the program review and audit processes, and the procedures recommended for local district and department program reviews and program audits as defined in subsection (1)(h) and (i) of this section. The department shall distribute the criteria and procedures for program reviews and audits to all schools and teacher preparation programs.*
    3. *Each local district shall do an annual program review and the Department of Education shall conduct a program review of every school's program within a two (2) year period. The*

*frequency of program audits shall be determined by the Department of Education in compliance with the requirements established by the state board.*

4. *Each school-based decision making council shall analyze the findings from programs reviews for its school and determine how it will address program recommendations to improve the program for students.*
- (c) **Writing.**
1. *The Kentucky Department of Education shall provide guidelines for an effective writing program and establish criteria to use in the program review and program audit process as defined in subsection (1)(h) and (i) of this section. The department shall distribute the guidelines and criteria for program reviews within the curriculum to all schools and teacher preparation programs.*
  2. *Each school-based decision making council or if there is no school council, a committee appointed by the principal, shall adopt policies that determine the writing program for its school and submit it to the Department of Education for review and comment. The writing program shall incorporate a variety of language resources, technological tools, and multiple opportunities for students to develop complex communication skills for a variety of purposes.*
  3. *Writing portfolios, consisting of samples of individual student work that represent the interests and growth of the student over time, shall be a required part of any writing program in primary through grade twelve (12). Portfolios shall be part of the required criteria for the program review and audit process relating to the writing program under this paragraph. Individual student scores on portfolios shall not be included in the accountability system.*
  4. *A writing portfolio shall be maintained for each student and follow each student from grade to grade and to any school in which the student may enroll.*
  5. *A school's policies for the writing program shall address the use of the portfolio for determining a student's performance in:*
    - a. *Communication;*
    - b. *Grading procedures and feedback to students regarding their writing and communication skills;*
    - c. *The responsibility for review of the portfolios and feedback to students; and*
    - d. *Other policies to improve the quality of an individual student's writing and communications skills.*
  6. *Each local district shall do an annual program review and the Department of Education shall conduct a program review of every school's program within a two (2) year period. The frequency of program audits shall be determined by the Department of Education in compliance with the requirements established by the state board.*

*The Department of Education shall ensure that all schools and districts understand how the results of the program reviews and audits of arts and humanities, practical living skills and career studies and writing are included in the accountability system under Section 4 of this Act and shall provide assistance to schools to improve the quality of the programs under this subsection.*

- (8) *Local school districts may select and use commercial interim or formative assessments or develop and use their own formative assessments to provide data on how well their students are growing toward mastery of Kentucky academic core content. Nothing in this section precludes teachers from using ongoing teacher-developed formative processes.*
- (9) *Beginning with the 2010-2011 school year, each school that enrolls primary students shall use diagnostic assessments and prompts that measure readiness in reading and mathematics for its primary students as determined by the school to be developmentally appropriate. The schools may use commercial products, use products and procedures developed by the district, or develop their own diagnostic procedures. The results shall be used to inform the teachers and parents or guardians of each student's skill level.*

(10) *In revising the state assessment program for implementation in 2011-2012 academic year, the state board shall ensure that a technically sound longitudinal comparison of the assessment results for the same students shall be made available.*

~~{(2) The assessment program shall include the following components:~~

- ~~(a) A customized or commercially available norm referenced tests that measures, to the extent possible, the core content for assessment. The test shall provide valid and reliable results for individual students;~~
- ~~(b) Open response or multiple choice items, or both, to assess student skills in reading, mathematics, science, social studies, the arts, the humanities, and practical living and vocational studies; and an on-demand assessment of student writing. These assessments shall measure, to the extent possible, the core content for assessment;~~
- ~~(c) Writing portfolios consisting of samples of student work. After receiving the advice of the Writing Advisory Committee, the Kentucky Board of Education shall, by September 1 following April 14, 1998, file a notice of intent to promulgate an administrative regulation which reduces the teacher and student time involved in preparing a writing portfolio. Time reduction strategies included in the administrative regulation may include, but are not limited to, limiting the time spent on a single portfolio entry, limiting the number of revisions, or collecting entries at different grade levels;~~
- ~~(d) Performance assessment events for schools that have students enrolled in performing arts organizations sponsoring sanctioned events with an established protocol for adjudication; and~~
- ~~(e) A technically sound longitudinal comparison of the assessment results for the same students.~~

~~(3) The provisions of subsection (2) of this section shall apply to elementary schools, and shall also apply to middle and high schools, except as provided in subsections (4) to (8) of this section.}~~

(11) ~~{(4) No later than the 2007-2008 school year, and each year thereafter,}~~The following provisions shall apply to the assessment *requirements*~~{program}~~ for middle and high schools:

- (a) The assessment program shall include:
  1. A high school readiness examination to assess English, reading, mathematics, and science in grade eight (8);
  2. A college readiness examination to assess English, reading, mathematics, and science in grade ten (10);
  3. The ACT college admissions and placement examination to assess English, reading, mathematics, and science, to be taken by all students in grade eleven (11); and
  4. Any other component necessary to comply with the No Child Left Behind Act of 2001, 20 U.S.C. sec. 6301 et seq., as determined by the United States Department of Education;
- (b)
  1. A student whose scores on the high school readiness examination administered in grade eight (8) *or as determined by the Kentucky Board of Education under subsection (5) of this section* indicate a high degree of readiness for high school shall be counseled to enroll in accelerated courses; and
  2. A student whose scores on the college readiness examination administered in grade ten (10) or the ACT college admissions and placement examination administered in grade eleven (11) indicate a high degree of readiness for college shall be counseled to enroll in accelerated courses, with an emphasis on Advanced Placement classes;
- (c) The cost of the initial ACT examination administered to students in grade eleven (11) shall be paid for by the Kentucky Department of Education. The costs of additional ACT examinations shall be the responsibility of the student;~~{and}~~
- (d) If funds are available, the Kentucky Department of Education shall provide an ACT preparation program to all public high school juniors. The department may contract for necessary services; *and*
- (e) The components of the middle and high school assessment program set forth in paragraph (a) of this subsection shall be administered in lieu of a customized or commercially available norm-referenced test under subsection (10)~~{(2)}~~(a) of this section.

- (12) ~~{(5) No later than the 2007-2008 school year, and each year thereafter, }~~Students in grades ten (10), eleven (11), and twelve (12) may take the WorkKeys assessments from ACT, Inc. in reading for information, locating information, and applied mathematics.
- (a) The costs of the initial WorkKeys assessments shall be paid by the Kentucky Department of Education *if funds are available for this purpose*. The cost of additional WorkKeys assessments shall be the responsibility of the student.
  - (b) A student whose scores on the WorkKeys assessments indicate that additional assistance is required in reading for information, locating information, or applied mathematics shall have intervention strategies for accelerated learning incorporated into his or her learning plan.
  - (c) A student meeting the WorkKeys threshold established by the Department of Workforce Investment shall be issued the appropriate Kentucky employability certificate.
- ~~{(6) (a) The Kentucky Department of Education shall conduct periodic studies comparing the standards in reading, mathematics, and science for middle and high schools within the Kentucky core content for assessment and the concepts and content measured by the ACT and the high school and college readiness examinations under subsection (4)(a) of this section.~~
- ~~(b) If the department determines that reading, mathematics, and science assessments required under subsection (4)(a) of this section are shown to provide direct measures of content standards and concepts identified in the Kentucky core content for assessment, the Kentucky Board of Education shall seek the advice of the Office of Education Accountability, the School Curriculum, Assessment, and Accountability Council, and the National Technical Advisory Panel on Assessment and Accountability regarding reducing the number of questions on the Commonwealth Accountability Testing System.~~
- ~~(c) The Kentucky Department of Education shall continue to include open response or multiple choice items, or both, that assess student knowledge and skills in reading, mathematics, and science to the degree necessary for adequate coverage of the elements of the Kentucky core content for assessment not covered by the examinations.}~~
- (13)~~{(7)}~~ Accommodations provided by ACT, Inc. to a student with a disability taking the assessments under subsection ~~(11)~~~~{(4)}~~(a)3. of this section shall consist of:
- (a) Accommodations provided in a manner allowed by ACT, Inc. when results in test scores are reportable to a postsecondary institution for admissions and placement purposes, except as provided in paragraph (b) of this subsection; or
  - (b) Accommodations provided in a manner allowed by a student's individualized education program as defined in KRS 158.281 for a student whose disability precludes valid assessment of his or her academic abilities using the accommodations provided under paragraph (a) of this subsection when the student's scores are not reportable to a postsecondary institution for admissions and placement purposes.
- (14)~~{(8)}~~ The assessments under subsections ~~(11) and (12)~~~~{(4) and (5)}~~ of this section shall be known as the "Kentucky Work and College Readiness Examination" or "Readiness Examination."
- (15)~~{(9)}~~ Kentucky teachers shall have a significant role in the design of the assessments. The assessments shall be designed to:
- (a) Measure grade appropriate core academic content, basic skills, and higher-order thinking skills and their application. The assessment shall measure the core content for assessment used by the Department of Education during the 1997-98 school year *until the 2011-2012 academic year. The revised academic content standards developed as required by subsection (2) of this section shall be used in the revised assessment program for implementation in the 2011-2012 academic year as required by subsection (3) of this section.* Any *future* revisions to the core content for assessment shall be developed through a public process involving parents; educators at the elementary, secondary, and postsecondary education levels; professional education advocacy groups and organizations; and business and civic leaders and shall be distributed to all public schools;
  - (b) Provide valid and reliable scores for schools. If scores are reported for students individually, they shall be valid and reliable; and
  - (c) Minimize the time spent by teachers and students on assessment.

- (16) (a) *Through the fall of 2011,~~[(10)]~~ results from the state assessment under this section shall be reported to the school districts and schools no later than one hundred fifty (150) days following the first day the assessment can be administered.*
- (b) *Beginning in the fall of 2012, the results from assessment under subsections (3) and (5) of this section shall be reported to the school districts and schools no later than seventy-five (75) days following the first day the assessment can be administered.*
- (17)~~[(11)]~~ The Department of Education shall gather information to establish the validity of the assessment and accountability program. It shall develop a biennial plan for validation studies that shall include but not be limited to the consistency of student results across multiple measures, the congruence of school scores with documented improvements in instructional practice and the school learning environment, and the potential for all scores to yield fair, consistent, and accurate student performance level and school accountability decisions. Validation activities shall take place in a timely manner and shall include a review of the accuracy of scores assigned to students and schools, as well as of the testing materials. The plan shall be submitted to the Commission by July 1 of the first year of each biennium. A summary of the findings shall be submitted to the Legislative Research Commission by September 1 of the second year of the biennium.
- (18)~~[(12)]~~ ~~{In addition to statewide testing for the purpose of determining school success,}~~ *The Department of Education and the state board shall have the responsibility of assisting local school districts and schools in developing and using continuous assessment strategies needed to assure student progress. The continuous assessment shall provide diagnostic information to improve instruction to meet the needs of individual students.*
- (19) *No later than sixty (60) days after the effective date of this Act, the state board shall revise the Administration Code for Kentucky's Assessment Program to include prohibitions of inappropriate test preparation activities by school district employees charged with test administration and oversight, including but not limited to the issue of teachers being required to do test practice in lieu of regular classroom instruction and test practice outside the normal work day. The revisions shall include disciplinary sanctions that may be taken toward a school or individuals.*
- (20)~~[(13)]~~ The Kentucky Board of Education, after the Department of Education has received advice from the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, shall promulgate an administrative regulation under KRS Chapter 13A to establish the components of a reporting structure for assessments administered under this section. The reporting structure shall include the following components:
- (a) A school report card that clearly communicates with parents and the public about school performance. The school report card shall be sent to the parents of the students of the districts, and a summary of the results for the district shall be published in the newspaper with the largest circulation in the county. It shall include but not be limited to the following components reported by race, gender, and disability when appropriate:
1. Student academic achievement, including the results from each of the assessments administered under this section;
  2. For Advanced Placement and International Baccalaureate, the courses offered, the number of students enrolled, completing, and taking the examination for each course, and the percentage of examinees receiving a score of three (3) or better on AP examinations or a score of five (5) or better on IB examinations. The data shall be disaggregated by gender, race, students with disabilities, and economic status. This data shall be included in the report card beginning with the 2009-2010 academic year;
  3. Nonacademic achievement, including the school's attendance, retention, *graduation*~~drop out~~ rates, and student transition to adult life; and
  4. School learning environment, including measures of parental involvement;
- (b) An individual student report to parents for each ~~fifth grade~~ student *in grades three (3) through eight (8)* summarizing the student's *skills*~~readiness~~ in reading and mathematics ~~based on the student's fourth grade state assessment results~~. The school's ~~fifth grade~~ staff shall develop a plan for accelerated learning for any student with identified deficiencies *or strengths*;

- (c) An individual report for each student who takes a high school or college readiness examination administered under subsection ~~(11)(4)~~(a) of this section that:
  - 1. Provides the student's test scores;
  - 2. Provides a judgment regarding whether or not a student has met, *exceeded*, or failed to meet the expectations for each standard assessed; and
  - 3. Is designed to assist students, parents, and teachers to identify, assess, and remedy academic deficiencies prior to high school graduation; and
- (d) A student's scores on the ACT examination or WorkKeys assessments administered under subsections ~~(11) and (12)(4)(a) and (5)~~ of this section and the ACT examination under KRS 158.6459(5) shall be recorded on his or her official high school transcript.

**(21) *The Kentucky Board of Education shall conduct periodic alignment studies that compare the norm-referenced tests required under subsection (5) of Section 2 of this Act with the standards in the different content areas to determine how well the norm-referenced tests align and adequately measure the depth of knowledge and breadth of Kentucky's academic content standards. Based on its findings from the studies, the board may decrease the number of required criterion-referenced items required under subsection (5) of Section 2 of this Act.***

➔Section 3. KRS 158.6452 is amended to read as follows:

- (1) A School Curriculum, Assessment, and Accountability Council is hereby created to study, review, and make recommendations concerning Kentucky's system of setting academic standards, assessing learning, *identifying academic competencies and deficiencies of individual students*, holding schools accountable for learning, and assisting schools to improve their performance. The council shall advise the Kentucky Board of Education and the Legislative Research Commission on issues related to the development and communication of the academic expectations and core content for assessment, the development and implementation of the statewide assessment and accountability program, *recognition of high performing schools*, ~~the distribution of rewards and~~ imposition of sanctions, and assistance for schools to improve their performance under KRS 158.6453, 158.6455, 158.782, and 158.805.
- (2) The School Curriculum, Assessment, and Accountability Council shall be composed of seventeen (17) voting members appointed by the Governor. On making appointments to the council, the Governor shall assure broad geographical representation and representation of elementary, middle, and secondary school levels; assure equal representation of the two (2) sexes, inasmuch as possible; and assure that appointments reflect the minority racial composition of the Commonwealth. The members shall serve terms of two (2) years with no member serving more than two (2) consecutive terms, except that seven (7) of the initial appointments shall be for four (4) year terms. The members shall be appointed as follows:
  - (a) Two (2) parents from recommendations submitted by organizations representing school councils and parents;
  - (b) Two (2) teachers from recommendations submitted by organizations representing teachers;
  - (c) Two (2) superintendents from recommendations submitted by organizations representing superintendents;
  - (d) Two (2) principals from organizations representing school administrators;
  - (e) Two (2) local school board members from recommendations submitted by organizations representing school boards;
  - (f) Two (2) school district assessment coordinators from recommendations submitted by organizations representing district assessment coordinators;
  - (g) Two (2) employers in the state from recommendations submitted by organizations representing business and industry;
  - (h) Two (2) university professors with expertise in assessment and measurement; and
  - (i) One (1) at-large member.
- (3) The School Curriculum, Assessment, and Accountability Council shall elect a chair annually from its membership.

- (4) The members shall be remunerated for actual and necessary expenses incurred while attending meetings of the council or while serving as representative of the council.
- (5) The School Curriculum, Assessment, and Accountability Council shall meet at least four (4) times each year at times and places as it determines by resolution.
- (6) The School Curriculum, Assessment, and Accountability Council shall be attached to the Department of Education for administrative purposes. It shall be provided appropriate staff and resources to conduct its work.

➔Section 4. KRS 158.6455 is amended to read as follows:

It is the intent of the General Assembly that schools succeed with all students and receive the appropriate consequences in proportion to that success.

- (1) (a) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish a system for identifying~~[ and rewarding]~~ successful schools.~~[A reward shall be distributed to successful schools based on the number of full-time, part-time, and itinerant certified staff employed in the school on the last working day of the year of the reward to be used for school purposes as determined by the school council or, if none exists, the principal.]~~ The Kentucky Board of Education shall identify reports, paperwork requirements, and administrative regulations from which high performing schools shall be exempt.
- (b) ~~[Effective July 1, 2006,]~~The Kentucky Board of Education shall **recognize**~~[reward]~~ schools that exceed their improvement goal and have an annual average dropout rate below five percent (5%). A student shall be included in the annual average dropout rate if the student was enrolled in the school of record for at least thirty (30) days during the school year prior to the day he or she was recorded as dropping out of school. A student shall not be included in a school's annual average dropout rate if:
  1. The student is enrolled in a district-operated or district-contracted alternative program leading to a certificate of completion or a General Educational Development (GED) diploma; or
  2. The student has withdrawn from school and is awarded a General Educational Development (GED) diploma by October 1 of the following school year.
- (c) A student enrolled in a district-operated or district-contracted alternative program shall participate in the appropriate assessments required by the **assessment program**~~[Commonwealth Accountability Testing System]~~ established in KRS 158.6453.
- (2) ~~[After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate by administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A the formula for a school accountability index to classify schools every two (2) years based on whether they have met their threshold level for school improvement, with school years 1998-2000 serving as the baseline, except the Department of Education shall seek advice from the National Technical Advisory Panel on Assessment and Accountability for adjustments required if substantive changes are made to the assessment and accountability system. The formula shall reflect the school goals described in KRS 158.6451, except there shall be no measurement of the goals included in subsection (1)(b)3. and (1)(b)4.]~~**After the academic standards are revised and a new student assessment program is developed pursuant to Section 2 of this Act, the Kentucky Board of Education shall create an accountability system to classify districts and schools.**
  1. **The accountability system shall include:**
    - a. **The results of program assessments of arts and humanities, practical living skills and career studies, and writing programs;**
    - b. **Student assessment results;**
    - c. **School improvement results; and**
    - d. **Other factors deemed appropriate by the board.**

2. *The board shall determine how student assessment and program assessment data from the 2011-2012 and 2012-2013 school years shall be used and reported within the new accountability system.*
  3. *Prior to promulgating administrative regulations to revise the accountability system, the board shall seek advice from the School Curriculum, Assessment, and Accountability Council; the Office of Education Accountability; the Education Assessment and Accountability Review Subcommittee; and the National Technical Advisory Panel on Assessment and Accountability.*
- (3) A student's test scores shall be counted in the accountability *measure*~~[index]~~ of:
- (a)
    1. The school in which the student is currently enrolled if the student has been enrolled in that school for at least *a full academic year as defined by the Kentucky Board of Education*~~[one hundred (100) days of the school year prior to the beginning of the statewide testing period]~~; or
    2. The school in which the student was previously enrolled if the student was enrolled in that school for at least *a full academic year as defined by the Kentucky Board of Education*~~[one hundred (100) days of the school year prior to the beginning of the statewide testing period]~~; and
  - (b) The school district if the student is enrolled in the district for at least *a full academic year as defined by the Kentucky Board of Education*~~[one hundred (100) days of the school year prior to the beginning of the statewide testing period]~~; and
  - (c) The state if the student is enrolled in a Kentucky public school prior to the beginning of the statewide testing period.
- (4) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate an administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A to establish appropriate consequences for schools failing to meet their *accountability measures*~~[threshold]~~. The consequences shall be designed to improve *the academic performance and learning environment of identified schools*~~[teaching and learning]~~ and may include but not be limited to:
- (a) A *review and*~~[scholastic]~~ audit process under subsection (5) of this section to determine the appropriateness of a school's *or district's* classification and to recommend needed assistance;
  - (b) School *and district* improvement plans;
  - (c) Eligibility to receive Commonwealth school improvement funds under KRS 158.805;
  - (d) Education assistance from highly skilled certified staff under KRS 158.782;
  - (e) Evaluation of school personnel; and
  - (f) Student transfer to successful schools.
- (5) ~~[(a) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability,] The Kentucky Board of Education shall promulgate an administrative regulation in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A establishing the guidelines for conducting *program reviews and*~~[scholastic]~~ audits~~[, which shall include the process for:~~~~
1. ~~Appointing and training team members. The team shall include at least a highly skilled certified educator under KRS 158.782, a teacher, a principal or other local district administrator, a parent, and a university faculty member;~~
  2. ~~Reviewing a school's learning environment, efficiency, and academic performance of students and the quality of the school council's data analysis and planning in accordance with KRS 160.345(2)(j);~~
  3. ~~Evaluating each certified staff member assigned to the school. Only certified members of the audit team shall evaluate personnel; and~~
  4. ~~Making a recommendation to the Kentucky Board of Education about the appropriateness of a school's classification and a recommendation concerning the assistance required by the school to improve teaching and learning.~~

~~(b) The scholastic audit team shall consider the functioning of the school council in its review and make recommendations for improvement of the school council, if needed, and concerning the authority of the school council if required under KRS 160.346.~~

~~(c) For information purposes, the board shall also conduct scholastic audits in a sample of schools that achieved their goal and report to the public on the resulting findings regarding each aspect of the schools' operations required under subparagraph 2. of paragraph (a) of this subsection.~~

- (6) All students who drop out of school during a school year shall be included in a school's annual average school **graduation rate calculation** ~~[dropout rate]~~, except as provided in subsection (1)(b) of this section.
- (7) After receiving the advice of the **Education Assessment and Accountability Review Subcommittee**, the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education may promulgate by administrative regulation, in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, a system of district accountability that includes establishing a formula for accountability, goals for improvement over a two (2) year period, rewards for leadership in improving teaching and learning in the district, and consequences that address the problems and provide assistance when the district fails to achieve its goals set by the board. **The board shall revise the district accountability system based on the revised assessment program, including program and student assessments, to be implemented in the 2011-2012 school year as required in Section 2 of this Act.**
- (8) After receiving the advice of the Office of Education Accountability; the School Curriculum, Assessment, and Accountability Council; and the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall promulgate administrative regulations in conformity with KRS 158.6471 and 158.6472 and KRS Chapter 13A, to establish a process whereby a school shall be allowed to appeal a performance judgment which it considers grossly unfair. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. The state board may adjust a performance judgment on appeal when evidence of highly unusual circumstances warrants the conclusion that the performance judgment is based on fraud or a mistake in computations, is arbitrary, is lacking any reasonable basis, or when there are significant new circumstances occurring during the biennial assessment period which are beyond the control of the school.

➔Section 5. KRS 158.6458 is amended to read as follows:

The Department of Education shall develop a plan for implementing the state assessment and accountability system created under KRS 158.6453 and 158.6455 and shall report quarterly to the Interim Joint Committee on Education on its progress in the following areas:

- (1) Establishing a consistent structure of test components, grade-level testing distribution, and test administration procedures;
- (2) Beginning a new cycle of equating procedures for which their adequacy and precision can be tested rigorously and conducting appropriate equating analyses to accommodate the new accountability system;
- (3) Publishing more complete and informative guides for interpreting school accountability ~~[index score]~~ changes ~~[that include information about the estimated error of the accountability index, as well as information about the connections between index score changes and estimated changes in student performance levels];~~
- (4) Reviewing school accountability classifications to assure their construct validity in all cases where they are applied;
- (5) Maintaining and strengthening the **assessment of schools' program reviews**~~[annual audit of portfolio scores in ways that serve to minimize the differences between teacher produced scores and audit generated scores];~~
- (6) Developing and implementing a validity research plan as required under KRS 158.6453;
- (7) Establishing additional routine audits of key processes in the assessment and accountability program;
- (8) Maintaining and cataloging a library of technical documents related to the assessment and accountability program for internal and external review purposes. In addition, the department shall produce an annual technical report for audiences that include educators, testing coordinators, parents, and legislators; and

- (9) Maintaining a vigorous ongoing program of research and documentation of the effects of the assessment and accountability system on Kentucky schools.

➔Section 6. KRS 158.6459 is amended to read as follows:

- (1) A high school student whose scores on the high school readiness examination administered in grade eight (8), on the college readiness examination administered in grade ten (10), or on the WorkKeys indicate that additional assistance *or advanced work* is required in English, reading, or mathematics shall have intervention strategies for accelerated learning incorporated into his or her learning plan.
- (2) A high school student whose score on the ACT examination under KRS 158.6453 ~~(II)(4)~~(a)3. in English, reading, or mathematics is below the systemwide standard established by the Council on Postsecondary Education for entry into a credit-bearing course at a public postsecondary institution without placement in a remedial course or an entry-level course with supplementary academic support shall be provided the opportunity to participate in accelerated learning designed to address his or her identified academic deficiencies prior to high school graduation.
- (3) A high school, in collaboration with its school district, shall develop and implement accelerated learning that:
  - (a) Allows a student's learning plan to be individualized to meet the student's academic needs based on an assessment of test results and consultation among parents, teachers, and the student; and
  - (b) May include changes in a student's class schedule.
- (4) The Kentucky Department of Education, the Council on Postsecondary Education, and public postsecondary institutions shall offer support and technical assistance to schools and school districts in the development of accelerated learning.
- (5) A student who participates in accelerated learning under this section shall be permitted to take the ACT examination a second time prior to high school graduation at the expense of the Kentucky Department of Education. The cost of any subsequent administrations of the achievement test shall be the responsibility of the student.

➔Section 7. KRS 158.649 is amended to read as follows:

- (1) "Achievement gap" means a substantive performance difference on each of the tested areas by grade level of the *state assessment program* ~~[Commonwealth Accountability Testing System]~~ between the various groups of students including male and female students, students with and without disabilities, students with and without English proficiency, minority and nonminority students, and students who are eligible for free and reduced lunch and those who are not eligible for free and reduced lunch.
- (2) By November 1 of each year, the Department of Education shall provide each school council, or the principal if a school council does not exist, data on its students' performance as shown by the *state assessment program described in Section 2 of this Act* ~~[Commonwealth Accountability Testing System]~~. The data shall include, but not be limited to, information on performance levels of all students tested, and information on the performance of students disaggregated by race, gender, disability, English proficiency, and participation in the federal free and reduced price lunch program. The information from the department shall include an equity analysis that shall identify the substantive differences among the various groups of students identified in subsection (1) of this section. ***Beginning with the 2012-2013 school year, the reporting requirement in this subsection shall be no later than seventy-five (75) days following the first day the assessment can be administered.***
- (3) ~~[By December 1, 2002,]~~ Each local board of education upon the recommendation of the local district superintendent shall adopt a policy for reviewing the academic performance on the state assessments required under KRS 158.6453 for various groups of students, including major racial groups, gender, disability, free and reduced price school lunch eligibility, and limited English proficiency. The local board policy shall be consistent with Kentucky Board of Education administrative regulations. Upon agreement of the school-based decision making council, or the principal if there is not a council, and the superintendent, the local board shall establish a biennial target for each school for reducing identified gaps in achievement as set out in subsection (4) of this section.
- (4) By February 1, 2003, and each February 1 in odd-numbered years thereafter, the school-based decision making council, or the principal if there is not a council, with the involvement of parents, faculty, and staff shall set the school's biennial targets for eliminating any achievement gap and submit them to the superintendent for consideration. The superintendent and the school-based decision making council, or the principal if there is not

a council, shall agree on the biennial targets before they are submitted to the local board of education for adoption. ***Beginning with the 2012-2013 school year, the reporting requirement in this subsection shall be October 1 of each year.***

- (5) By April 1, 2003, and each April 1 in odd-numbered years thereafter, the school council, or the principal if a school council does not exist, with the involvement of parents, faculty, and staff, shall review the data and revise the consolidated plan to include the biennial targets, strategies, activities, and a time schedule calculated to eliminate the achievement gap among various groups of students to the extent it may exist. The plan shall include but not be limited to activities designed to address the following areas:
- (a) Curriculum alignment within the school and with schools that send or receive the school's students;
  - (b) Evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work;
  - (c) Professional development to address the goals of the plan;
  - (d) Parental communication and involvement;
  - (e) Attendance improvement and dropout prevention; and
  - (f) Technical assistance that will be accessed.

***Beginning with the 2012-2013 school year, the reporting requirement in this subsection shall be October 1 of each year.***

- (6) The principal shall convene a public meeting at the school to present and discuss the plan prior to submitting it to the superintendent and the local board of education for review, in the public meeting required under KRS 160.340
- (7) Based on the disaggregated ~~biennial~~ assessment results, the local board shall determine if each school achieved its ~~biennial~~ targets for each group of students. Only data for a group of students including ten (10) or more students shall be considered.
- (8) Notwithstanding KRS 160.345(8) and 158.070(8), if a local board determines that a school has not met its ~~biennial~~ target to reduce the identified gap in student achievement for a group of students, the local board shall require the council, or the principal if no council exists, to submit its revisions to the ***school improvement*** ~~consolidated~~ plan describing the use of professional development funds and funds allocated for continuing education to reduce the school's achievement gap for review and approval by the superintendent. The plan shall address how the school will meet the academic needs of the students in the various groups identified in subsection (1) of this section.
- (9) The superintendent shall report to the commissioner of education if a school fails to meet its targets to reduce the gap in student achievement for any student group for two (2) ***consecutive years*** ~~successive biennia~~. The school's ***improvement*** ~~consolidated~~ plan shall be subject to review and approval by the Kentucky Department of Education and the school shall submit an annual status report. The Department of Education may provide assistance to schools as it deems necessary to assist the school in meeting its goals.
- (10) The school-based decision making council, or the principal if there is not a council, shall no longer be required to seek approval of the plan under subsections (8) and (9) of this section when it meets its biennial target for reducing the gap in student achievement for the various groups of students identified in subsection (1) of this section.

➔Section 8. KRS 156.095 is amended to read as follows:

- (1) The Kentucky Department of Education shall establish, direct, and maintain a statewide program of professional development to improve instruction in the public schools.
- (2) Each local school district superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator who shall disseminate professional development information to schools and personnel. Upon request by a school council or any employees of the district, the coordinator shall provide technical assistance to the council or the personnel that may include assisting with needs assessments, analyzing school data, planning and evaluation assistance, organizing districtwide programs requested by school councils or groups of teachers, or other coordination activities.

- (a) The manner of appointment, qualifications, and other duties of the professional development coordinator shall be established by Kentucky Board of Education through promulgation of administrative regulations.
- (b) The local district professional development coordinator shall participate in the Kentucky Department of Education annual training program for local school district professional development coordinators. The training program may include, but not be limited to, the demonstration of various approaches to needs assessment and planning; strategies for implementing long-term, school-based professional development; strategies for strengthening teachers' roles in the planning, development, and evaluation of professional development; and demonstrations of model professional development programs. The training shall include information about teacher learning opportunities relating to the core content standards. The Kentucky Department of Education shall regularly collect and distribute this information.
- (3) The Kentucky Department of Education shall provide or facilitate optional, professional development programs for certified personnel throughout the Commonwealth that are based on the statewide needs of teachers, administrators, and other education personnel. Programs may include classified staff and parents when appropriate. Programs offered or facilitated by the department shall be at locations and times convenient to local school personnel and shall be made accessible through the use of technology when appropriate. They shall include programs that: address the goals for Kentucky schools as stated in KRS 158.6451, including reducing the achievement gaps as determined by an equity analysis of the disaggregated student performance data from the *state assessment program developed under Section 2 of this Act*~~Commonwealth Accountability Testing System~~; engage educators in effective learning processes and foster collegiality and collaboration; and provide support for staff to incorporate newly acquired skills into their work through practicing the skills, gathering information about the results, and reflecting on their efforts. Professional development programs *shall be made available to teachers based on their needs which shall*~~may~~ include~~;~~ but not be limited to~~;~~ ~~focus on~~ the following areas:
- (a) Strategies to reduce the achievement gaps among various groups of students *and to provide continuous progress*;
- (b) Curriculum content and methods of instruction for each content area *including differentiated instruction*;
- (c) School-based decision making;
- (d) *Assessment literacy*;
- (e) *Integration of performance-based student assessment into daily classroom instruction*;
- (f)~~(e)~~ Nongraded primary programs;
- (g)~~(f)~~ Research-based instructional practices;
- (h)~~(g)~~ Instructional uses of technology;
- (i)~~(h)~~ Curriculum design to serve the needs of students with diverse learning styles and skills and of students of diverse cultures;
- (j)~~(i)~~ Instruction *in reading, including*~~(e)~~ phonics, *phonemic awareness, comprehension, fluency, and vocabulary*;
- (k)~~(j)~~ Educational leadership; and
- (l)~~(k)~~ Strategies to incorporate character education throughout the curriculum.
- (4) ~~The department shall utilize its regional service centers, in addition to collaboration with postsecondary education institutions, education cooperative and consortia, and professional education organizations, to provide local district personnel with access to high quality programming.~~ The department shall assist school personnel in assessing the impact of professional development on their instructional practices and student learning.
- (5) The department shall assist districts and school councils with the development of long-term school and district improvement plans that include multiple strategies for professional development based on the assessment of needs at the school level.

- (a) Professional development strategies may include, but are not limited to, participation in subject matter academies, teacher networks, training institutes, workshops, seminars, and study groups; collegial planning; action research; mentoring programs; appropriate university courses; and other forms of professional development.
  - (b) In planning the use of the four (4) days for professional development under KRS 158.070, school councils and districts shall give priority to programs that increase teachers' understanding of curriculum content and methods of instruction appropriate for each content area based on individual school plans. The district may use up to one (1) day to provide district-wide training and training that is mandated by state or federal law. Only those employees identified in the mandate or affected by the mandate shall be required to attend the training.
  - (c) State funds allocated for professional development shall be used to support professional development initiatives that are consistent with local school improvement and professional development plans and teachers' individual growth plans. The funds may be used throughout the year for all staff, including classified and certified staff and parents on school councils or committees. A portion of the funds allocated to each school council under KRS 160.345 may be used to prepare or enhance the teachers' knowledge and teaching practices related to the content and subject matter that are required for their specific classroom assignments.
- (6) The Department of Education shall establish an electronic consumer bulletin board that posts information regarding professional development providers and programs as a service to school district central office personnel, school councils, teachers, and administrators. Participation on the electronic consumer bulletin board shall be voluntary for professional development providers or vendors, but shall include all programs sponsored by the department. Participants shall provide the following information: program title; name of provider or vendor; qualifications of the presenters or instructors; objectives of the program; program length; services provided, including follow-up support; costs for participation and costs of materials; names of previous users of the program, addresses, and telephone numbers; and arrangements required. Posting information on the bulletin board by the department shall not be viewed as an endorsement of the quality of any specific provider or program.
- (7) The Department of Education shall provide training to address the characteristics and instructional needs of students at risk of school failure and most likely to drop out of school. The training shall be developed to meet the specific needs of all certified and classified personnel depending on their relationship with these students. The training for instructional personnel shall be designed to provide and enhance skills of personnel to:
- (a) Identify at-risk students early in elementary schools as well as at-risk and potential dropouts in the middle and high schools;
  - (b) Plan specific instructional strategies to teach at-risk students;
  - (c) Improve the academic achievement of students at risk of school failure by providing individualized and extra instructional support to increase expectations for targeted students;
  - (d) Involve parents as partners in ways to help their children and to improve their children's academic progress; and
  - (e) Significantly reduce the dropout rate of all students.
- (8) ~~By July 1, 2001,~~ The department shall establish teacher academies to the extent funding is available in cooperation with postsecondary education institutions for elementary, middle school, and high school faculty in core disciplines, utilizing facilities and faculty from universities and colleges, local school districts, and other appropriate agencies throughout the state. Priority for participation shall be given to those teachers who are teaching core discipline courses for which they do not have a major or minor or the equivalent. Participation of teachers shall be voluntary.

➔Section 9. KRS 158.816 is amended to read as follows:

- (1) The Kentucky Department of Education and the Office of Career and Technical Education, with involvement of representatives from the local school districts and teacher preparation institutions, shall jointly complete an annual statewide analysis and report of academic achievement of technical education students who have completed or are enrolled in a sequence of a technical program of at least three (3) high school credits.

- (2) The analysis shall include the previous year's results from the *state assessment program described in Section 2 of this Act* ~~[Commonwealth Accountability Testing System]~~. The data shall be disaggregated for all high school students by career cluster areas of agriculture, business and marketing, human services, health services, transportation, construction, communication, and manufacturing and by special populations. Where available, disaggregated data from other national assessments shall also be used.
- (3) (a) The Kentucky Department of Education, with assistance from the Office of Career and Technical Education, shall coordinate the development of a statewide technical assistance plan to aid providers of programs in identifying areas for improvement for those schools that do not meet their school performance goal and for those schools where technical students as a group do not score equal to or better than the school average in each of the academic areas. The plan shall address methodologies for further analysis at each school including but not limited to:
1. The academic course-taking patterns of the technical students;
  2. The rigor and intensity of the technical programs and expectations for student performance in reading, math, science, and writing and other academic skills as well as in technical skill development;
  3. The level of communication and collaboration between teachers in technical programs and academic programs, planning, and opportunity for analyzing student achievement, particularly between faculty in the comprehensive high schools with the faculty in state-operated or locally operated secondary area centers and vocational departments;
  4. The faculties' understanding of Kentucky's program of studies, academic expectations, and core content for assessment;
  5. The knowledge and understanding of academic teachers and technical teachers in integrating mutually supportive curricula content;
  6. The level of curricula alignment and articulation in grades eight (8) to sixteen (16);
  7. The availability of extra help for students in meeting higher standards;
  8. The availability and adequacy of school career and guidance counseling;
  9. The availability and adequacy of work-based learning;
  10. The availability and adequacy of distance learning and educational technology;
  11. The adequacy of involvement of business and industry in curricula, work-based learning, and program development; and
  12. The adequacy of teachers' preparation to prepare them for teaching both academic and technical skills to all students that are necessary for successful transition to postsecondary education, work, or the military.
- (b) The department and the office, in cooperation with teacher preparation programs, postsecondary education institutions, and other appropriate partners, shall ensure that academic core content is imbedded or integrated within the performance requirements for students.
- (c) The department and the office, in cooperation with the Kentucky Community and Technical College System, shall encourage postsecondary education and business and industry to provide professional development and training opportunities to engage technical faculty in continuous improvement activities to enhance their instructional skills.
- (d) The department and the office shall continue efforts with business and industry to develop occupation skill standards and assessments. All efforts shall be made with the involvement of business, industry, and labor. Skill standards and assessments, where available, shall be used as the focus of the curricula.
- (4) The department and the office shall consult with the Education Professional Standards Board in carrying out the requirements of this section as they relate to teacher preparation.
- ➔Section 10. KRS 159.035 is amended to read as follows:
- (1) Notwithstanding the provisions of any other statute, any student in a public school who is enrolled in a properly organized 4-H club shall be considered present at school for all purposes when participating in regularly

scheduled 4-H club educational activities, provided, the student is accompanied by or under the supervision of a county extension agent or the designated 4-H club leader for the 4-H club educational activity participated in.

- (2) Except as provided in paragraph (e) of this subsection, a public school principal shall give a student an excused absence of up to ten (10) school days to pursue an educational enhancement opportunity determined by the principal to be of significant educational value, including but not limited to participation in an educational foreign exchange program or an intensive instructional, experiential, or performance program in one (1) of the core curriculum subjects of English, science, mathematics, social studies, foreign language, and the arts.
- (a) A student receiving an excused absence under this subsection shall have the opportunity to make up school work missed and shall not have his or her class grades adversely affected for lack of class attendance or class participation due to the excused absence.
- (b) Educational enhancement opportunities under this subsection shall not include nonacademic extracurricular activities, but may include programs not sponsored by the school district.
- (c) If a request for an excused absence to pursue an educational enhancement opportunity is denied by a school principal, a student may appeal the decision to the district superintendent, who shall make a determination whether to uphold or alter the decision of the principal. If a superintendent upholds a principal's denial, a student may appeal the decision to the local board of education, which shall make a final determination. A principal, superintendent, and local board of education shall make their determinations based on the provisions of this subsection and the district's school attendance policies adopted in accordance with KRS 158.070 and KRS 159.150.
- (d) A student receiving an excused absence under the provisions of this subsection shall be considered present in school during the excused absence for the purposes of calculating average daily attendance as defined by KRS 157.320 under the Support Education Excellence in Kentucky program.
- (e) A student shall not be eligible to receive an excused absence under the provisions of this subsection for an absence during a school's testing window established for assessments of the *state assessment developed under Section 2 of this Act* ~~Commonwealth Accountability Testing System under KRS 158.6453~~ or during a testing period established for the administration of additional district-wide assessments at the school, except if a principal determines that extenuating circumstances make an excused absence to pursue an educational enhancement opportunity appropriate.
- (3) (a) If a student's parent, de facto custodian, or other person with legal custody or control of the student is a member of the United States Armed Forces, including a member of a state National Guard or a Reserve component called to federal active duty, a public school principal shall give the student:
1. An excused absence for one (1) day when the member is deployed; and
  2. An additional excused absence for one (1) day when the service member returns from deployment.
- (b) A student receiving an excused absence under this subsection shall have the opportunity to make up school work missed and shall not have his or her class grades adversely affected for lack of class attendance or class participation due to the excused absence.
- (c) A student receiving an excused absence under this subsection shall be considered present in school during the excused absence for the purposes of calculating average daily attendance as defined by KRS 157.320 under the Support Education Excellence in Kentucky program.

➔Section 11. KRS 158.805 is amended to read as follows:

- (1) There is hereby created the Commonwealth school improvement fund to assist local schools in pursuing new and innovative strategies to meet the educational needs of the school's students and raise ~~a~~<sup>at the</sup> school's performance level. ~~[Except for the school years 2002-2003 and 2003-2004 when the priority for the use of the fund shall be to provide technical assistance to schools identified under subsection (2) of this section to reduce the achievement gaps among the various groups of students as described in KRS 158.649, ]~~The Kentucky Board of Education shall utilize the Commonwealth school improvement fund to provide grants to schools for the following purposes:

- (a) To support teachers and administrators in the development of sound and innovative approaches to improve instruction or management, *including better use of formative and summative, performance-based assessments*;
  - (b) To assist in replicating successful programs developed in other districts including those calculated to reduce achievement gaps as defined in KRS 158.649;
  - (c) To encourage cooperative instructional or management approaches to specific school educational problems; and
  - (d) To encourage teachers and administrators to conduct experimental programs to test concepts and applications being advanced as solutions to specific educational problems.
- (2) The Kentucky Board of Education shall develop criteria for awards of grants from the Commonwealth school improvement fund to schools identified by the board as needing assistance under KRS 158.6455.
  - (3) The Kentucky Board of Education shall have the sole authority to approve grants from the fund.
  - (4) The Kentucky Board of Education may establish priorities for the use of the funds and, through the Department of Education, shall provide assistance to schools in preparing their grant proposals. The board shall require that no funds awarded under the Commonwealth school improvement fund are used to supplant funds from any other source. Requests for necessary equipment may be approved at the discretion of the state board, however the cost of equipment purchased by any grantee shall not exceed twenty percent (20%) of the total amount of money awarded for each proposal and shall be matched by local funds on a dollar for dollar basis.
  - (5) The Kentucky Board of Education shall establish maximums for specific grant awards. All fund recipients shall provide the board with an accounting of all money received from the fund and shall report the results and conclusions of any funded projects to the Kentucky Board of Education. All fund recipients shall provide the board with adequate documentation of all projects to enable replication of successful projects in other areas of the state.

➔Section 12. KRS 160.345 is amended to read as follows:

- (1) For the purpose of this section:
  - (a) "Minority" means American Indian; Alaskan native; African-American; Hispanic, including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin; Pacific islander; or other ethnic group underrepresented in the school;
  - (b) "School" means an elementary or secondary educational institution that is under the administrative control of a principal and is not a program or part of another school. The term "school" does not include district-operated schools that are:
    - 1. Exclusively vocational-technical, special education, or preschool programs;
    - 2. Instructional programs operated in institutions or schools outside of the district; or
    - 3. Alternative schools designed to provide services to at-risk populations with unique needs;
  - (c) "Teacher" means any person for whom certification is required as a basis of employment in the public schools of the state, with the exception of principals and assistant principals; and
  - (d) "Parent" means:
    - 1. A parent, stepparent, or foster parent of a student; or
    - 2. A person who has legal custody of a student pursuant to a court order and with whom the student resides.
- (2) Each local board of education shall adopt a policy for implementing school-based decision making in the district which shall include, but not be limited to, a description of how the district's policies, including those developed pursuant to KRS 160.340, have been amended to allow the professional staff members of a school to be involved in the decision making process as they work to meet educational goals established in KRS 158.645 and 158.6451. The policy may include a requirement that each school council make an annual report at a public meeting of the board describing the school's progress in meeting the educational goals set forth in KRS 158.6451 and district goals established by the board. The policy shall also address and comply with the following:

- (a) Except as provided in paragraph (b)2. of this subsection, each participating school shall form a school council composed of two (2) parents, three (3) teachers, and the principal or administrator. The membership of the council may be increased, but it may only be increased proportionately. A parent representative on the council shall not be an employee or a relative of an employee of the school in which that parent serves, nor shall the parent representative be an employee or a relative of an employee in the district administrative offices. A parent representative shall not be a local board member or a board member's spouse. None of the members shall have a conflict of interest pursuant to KRS Chapter 45A, except the salary paid to district employees;
- (b) 1. The teacher representatives shall be elected for one (1) year terms by a majority of the teachers. A teacher elected to a school council shall not be involuntarily transferred during his or her term of office. The parent representatives shall be elected for one (1) year terms. The parent members shall be elected by the parents of students preregistered to attend the school during the term of office in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. A school council, once elected, may adopt a policy setting different terms of office for parent and teacher members subsequently elected. The principal shall be the chair of the school council.
2. School councils in schools having eight percent (8%) or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member. If the council formed under paragraph (a) of this subsection does not have a minority member, the principal, in a timely manner, shall be responsible for carrying out the following:
- a. Organizing a special election to elect an additional member. The principal shall call for nominations and shall notify the parents of the students of the date, time, and location of the election to elect a minority parent to the council by ballot; and
- b. Allowing the teachers in the building to select one (1) minority teacher to serve as a teacher member on the council. If there are no minority teachers who are members of the faculty, an additional teacher member shall be elected by a majority of all teachers. Term limitations shall not apply for a minority teacher member who is the only minority on faculty;
- (c) 1. The school council shall have the responsibility to set school policy consistent with district board policy which shall provide an environment to enhance the students' achievement and help the school meet the goals established by KRS 158.645 and 158.6451. The principal shall be the primary administrator and the instructional leader of the school, and with the assistance of the total school staff shall administer the policies established by the school council and the local board.
2. If a school council establishes committees, it shall adopt a policy to facilitate the participation of interested persons, including, but not limited to, classified employees and parents. The policy shall include the number of committees, their jurisdiction, composition, and the process for membership selection;
- (d) The school council and each of its committees shall determine the frequency of and agenda for their meetings. Matters relating to formation of school councils that are not provided for by this section shall be addressed by local board policy;
- (e) The meetings of the school council shall be open to the public and all interested persons may attend. However, the exceptions to open meetings provided in KRS 61.810 shall apply;
- (f) After receiving notification of the funds available for the school from the local board, the school council shall determine, within the parameters of the total available funds, the number of persons to be employed in each job classification at the school. The council may make personnel decisions on vacancies occurring after the school council is formed but shall not have the authority to recommend transfers or dismissals;
- (g) The school council shall determine which textbooks, instructional materials, and student support services shall be provided in the school. Subject to available resources, the local board shall allocate an appropriation to each school that is adequate to meet the school's needs related to instructional materials and school-based student support services, as determined by the school council. The school council

shall consult with the school media librarian on the maintenance of the school library media center, including the purchase of instructional materials, information technology, and equipment;

- (h) Personnel decisions at the school level shall be as follows:
1. From a list of applicants submitted by the local superintendent, the principal at the participating school shall select personnel to fill vacancies, after consultation with the school council, consistent with subsection (2)(i)10. of this section. The superintendent may forward to the school council the names of qualified applicants who have pending certification from the Education Professional Standards Board based on recent completion of preparation requirements, out-of-state preparation, or alternative routes to certification pursuant to KRS 161.028 and 161.048. Requests for transfer shall conform to any employer-employee bargained contract which is in effect.
  2. If the vacancy to be filled is the position of principal, the school council shall select the new principal from among those persons recommended by the local superintendent, except as provided in subparagraph 4. of this paragraph. The superintendent shall provide additional applicants upon request when qualified applicants are available. The school council shall receive training in recruitment and interviewing techniques prior to carrying out the process of selecting a principal. The council shall select the trainer to deliver the training.
  3. Personnel decisions made at the school level under the authority of subparagraphs 1., 2., and 4. of this paragraph shall be binding on the superintendent who completes the hiring process.
  4. If the vacancy for the position of principal occurs in a school that has an index score that places it in the lowest one-third (1/3) of all schools below the assistance line and the school has completed a scholastic audit under KRS 158.6455 that includes findings of lack of effectiveness of the principal and school council, the superintendent shall appoint the principal after consulting with the school council.
  5. Applicants subsequently employed shall provide evidence that they are certified prior to assuming the duties of a position in accordance with KRS 161.020. The superintendent shall provide additional applicants upon request when qualified applicants are available;
- (i) The school council shall adopt a policy to be implemented by the principal in the following additional areas:
1. Determination of curriculum, including needs assessment, ~~and~~ curriculum development **and responsibilities under Section 2(7) of this Act**;
  2. Assignment of all instructional and noninstructional staff time;
  3. Assignment of students to classes and programs within the school;
  4. Determination of the schedule of the school day and week, subject to the beginning and ending times of the school day and school calendar year as established by the local board;
  5. Determination of use of school space during the school day;
  6. Planning and resolution of issues regarding instructional practices;
  7. Selection and implementation of discipline and classroom management techniques as a part of a comprehensive school safety plan, including responsibilities of the student, parent, teacher, counselor, and principal;
  8. Selection of extracurricular programs and determination of policies relating to student participation based on academic qualifications and attendance requirements, program evaluation, and supervision;
  9. Procedures, consistent with local school board policy, for determining alignment with state standards, technology utilization, and program appraisal; and
  10. Procedures to assist the council with consultation in the selection of personnel by the principal, including, but not limited to, meetings, timelines, interviews, review of written applications, and review of references. Procedures shall address situations in which members of the council are not available for consultation; and

- (j) Each school council shall annually review data ~~[on its students' performance]~~ as shown ***on state and local student assessments and program assessments required under Section 2 of this Act*** ~~[by the Commonwealth Accountability Testing System]~~. The data shall include but not be limited to information on performance levels of all students tested, and information on the performance of students disaggregated by race, gender, disability, and participation in the federal free and reduced price lunch program. After completing the review of data, each school council, with the involvement of parents, faculty, and staff, shall develop and adopt a plan to ensure that each student makes progress toward meeting the goals set forth in KRS 158.645 and 158.6451(1)(b) by April 1 of each year and submit the plan to the superintendent and local board of education for review as described in KRS 160.340. The Kentucky Department of Education shall provide each school council the data needed to complete the review required by this paragraph no later than November 1 of each year. If a school does not have a council, the review shall be completed by the principal with the involvement of parents, faculty, and staff.
- (3) The ~~*policies*~~ ~~[policy]~~ adopted by the local board to implement school-based decision making shall also address the following:
- (a) School budget and administration, including: discretionary funds; activity and other school funds; funds for maintenance, supplies, and equipment; and procedures for authorizing reimbursement for training and other expenses;
  - (b) Assessment of individual student progress, including testing and reporting of student progress to students, parents, the school district, the community, and the state;
  - (c) School improvement plans, including the form and function of strategic planning and its relationship to district planning, as well as the school safety plan and requests for funding from the Center for School Safety under KRS 158.446;
  - (d) Professional development plans developed pursuant to KRS 156.095;
  - (e) Parent, citizen, and community participation including the relationship of the council with other groups;
  - (f) Cooperation and collaboration within the district, with other districts, and with other public and private agencies;
  - (g) Requirements for waiver of district policies;
  - (h) Requirements for record keeping by the school council; and
  - (i) A process for appealing a decision made by a school council.
- (4) In addition to the authority granted to the school council in this section, the local board may grant to the school council any other authority permitted by law. The board shall make available liability insurance coverage for the protection of all members of the school council from liability arising in the course of pursuing their duties as members of the council.
- (5) After July 13, 1990, any school in which two-thirds (2/3) of the faculty vote to implement school-based decision making shall do so. All schools shall implement school-based decision making by July 1, 1996, in accordance with this section and with the policy adopted by the local board pursuant to this section. Upon favorable vote of a majority of the faculty at the school and a majority of at least twenty-five (25) voting parents of students enrolled in the school, a school meeting its goal as determined by the Department of Education pursuant to KRS 158.6455 may apply to the Kentucky Board of Education for exemption from the requirement to implement school-based decision making, and the state board shall grant the exemption. The voting by the parents on the matter of exemption from implementing school-based decision making shall be in an election conducted by the parent and teacher organization of the school or, if none exists, the largest organization of parents formed for this purpose. Notwithstanding the provisions of this section, a local school district shall not be required to implement school-based decision making if the local school district contains only one (1) school.
- (6) The Department of Education shall provide professional development activities to assist schools in implementing school-based decision making. School council members elected for the first time shall complete a minimum of six (6) clock hours of training in the process of school-based decision making, no later than thirty (30) days after the beginning of the service year for which they are elected to serve. School council

members who have served on a school council at least one (1) year shall complete a minimum of three (3) clock hours of training in the process of school-based decision making no later than one hundred twenty (120) days after the beginning of the service year for which they are elected to serve. Experienced members may participate in the training for new members to fulfill their training requirement. School council training required under this subsection shall be conducted by trainers endorsed by the Department of Education. By November 1 of each year, the principal through the local superintendent shall forward to the Department of Education the names and addresses of each council member and verify that the required training has been completed. School council members elected to fill a vacancy shall complete the applicable training within thirty (30) days of their election.

- (7) A school that chooses to have school-based decision making but would like to be exempt from the administrative structure set forth by this section may develop a model for implementing school-based decision making, including but not limited to a description of the membership, organization, duties, and responsibilities of a school council. The school shall submit the model through the local board of education to the commissioner of education and the Kentucky Board of Education, which shall have final authority for approval. The application for approval of the model shall show evidence that it has been developed by representatives of the parents, students, certified personnel, and the administrators of the school and that two-thirds (2/3) of the faculty have agreed to the model.
- (8) The Kentucky Board of Education, upon recommendation of the commissioner of education, shall adopt by administrative regulation a formula by which school district funds shall be allocated to each school council. Included in the school council formula shall be an allocation for professional development that is at least sixty-five percent (65%) of the district's per pupil state allocation for professional development for each student in average daily attendance in the school. The school council shall plan professional development in compliance with requirements specified in KRS 156.095, except as provided in KRS 158.649. School councils of small schools shall be encouraged to work with other school councils to maximize professional development opportunities.
- (9)
  - (a) No board member, superintendent of schools, district employee, or member of a school council shall intentionally engage in a pattern of practice which is detrimental to the successful implementation of or circumvents the intent of school-based decision making to allow the professional staff members of a school and parents to be involved in the decision making process in working toward meeting the educational goals established in KRS 158.645 and 158.6451 or to make decisions in areas of policy assigned to a school council pursuant to paragraph (i) of subsection (2) of this section.
  - (b) An affected party who believes a violation of this subsection has occurred may file a written complaint with the Office of Education Accountability. The office shall investigate the complaint and resolve the conflict, if possible, or forward the matter to the Kentucky Board of Education.
  - (c) The Kentucky Board of Education shall conduct a hearing in accordance with KRS Chapter 13B for complaints referred by the Office of Education Accountability.
  - (d) If the state board determines a violation has occurred, the party shall be subject to reprimand. A second violation of this subsection may be grounds for removing a superintendent, a member of a school council, or school board member from office or grounds for dismissal of an employee for misconduct in office or willful neglect of duty.
- (10) Notwithstanding subsections (1) to (9) of this section, a school's right to establish or maintain a school-based decision making council and the powers, duties, and authority granted to a school council may be rescinded or the school council's role may be advisory if the commissioner of education or the Kentucky Board of Education takes action under KRS 160.346.
- (11) Each school council of a school containing grades K-5 or any combination thereof, or if there is no school council, the principal, shall develop and implement a wellness policy that includes moderate to vigorous physical activity each day and encourages healthy choices among students. The policy may permit physical activity to be considered part of the instructional day, not to exceed thirty (30) minutes per day, or one hundred and fifty (150) minutes per week. Each school council, or if there is no school council, the principal, shall adopt an assessment tool to determine each child's level of physical activity on an annual basis. The council or principal may utilize an existing assessment program. The Kentucky Department of Education shall make available a list of available resources to carry out the provisions of this subsection. The department shall report to the Legislative Research Commission no later than November 1 of each year on how the schools are providing physical activity under this subsection and on the types of physical activity being provided. The

policy developed by the school council or principal shall comply with provisions required by federal law, state law, or local board policy.

➔Section 13. KRS 164.020 is amended to read as follows:

The Council on Postsecondary Education in Kentucky shall:

- (1) Develop and implement the strategic agenda with the advice and counsel of the Strategic Committee on Postsecondary Education. The council shall provide for and direct the planning process and subsequent strategic implementation plans based on the strategic agenda as provided in KRS 164.0203;
- (2) Revise the strategic agenda and strategic implementation plan with the advice and counsel of the committee as set forth in KRS 164.004;
- (3) Develop a system of public accountability related to the strategic agenda by evaluating the performance and effectiveness of the state's postsecondary system. The council shall prepare a report in conjunction with the accountability reporting described in KRS 164.095, which shall be submitted to the committee, the Governor, and the General Assembly by December 1 annually. This report shall include a description of contributions by postsecondary institutions to the quality of elementary and secondary education in the Commonwealth;
- (4) Review, revise, and approve the missions of the state's universities and the Kentucky Community and Technical College System. The Council on Postsecondary Education shall have the final authority to determine the compliance of postsecondary institutions with their academic, service, and research missions;
- (5) Establish and ensure that all postsecondary institutions in Kentucky cooperatively provide for an integrated system of postsecondary education. The council shall guard against inappropriate and unnecessary conflict and duplication by promoting transferability of credits and easy access of information among institutions;
- (6) Engage in analyses and research to determine the overall needs of postsecondary education and adult education in the Commonwealth;
- (7) Develop plans that may be required by federal legislation. The council shall for all purposes of federal legislation relating to planning be considered the "single state agency" as that term may be used in federal legislation. When federal legislation requires additional representation on any "single state agency," the Council on Postsecondary Education shall establish advisory groups necessary to satisfy federal legislative or regulatory guidelines;
- (8) Determine tuition and approve the minimum qualifications for admission to the state postsecondary educational system. In defining residency, the council shall classify a student as having Kentucky residency if the student met the residency requirements at the beginning of his or her last year in high school and enters a Kentucky postsecondary education institution within two (2) years of high school graduation. In determining the tuition for non-Kentucky residents, the council shall consider the fees required of Kentucky students by institutions in adjoining states, the resident fees charged by other states, the total actual per student cost of training in the institutions for which the fees are being determined, and the ratios of Kentucky students to non-Kentucky students comprising the enrollments of the respective institutions, and other factors the council may in its sole discretion deem pertinent;
- (9) Devise, establish, and periodically review and revise policies to be used in making recommendations to the Governor for consideration in developing recommendations to the General Assembly for appropriations to the universities, the Kentucky Community and Technical College System, and to support strategies for persons to maintain necessary levels of literacy throughout their lifetimes including but not limited to appropriations to the Kentucky Adult Education Program. The council has sole discretion, with advice of the Strategic Committee on Postsecondary Education and the executive officers of the postsecondary education system, to devise policies that provide for allocation of funds among the universities and the Kentucky Community and Technical College System;
- (10) Lead and provide staff support for the biennial budget process as provided under KRS Chapter 48, in cooperation with the committee;
- (11) (a) Except as provided in paragraph (b) of this subsection, review and approve all capital construction projects covered by KRS 45.750(1)(f), including real property acquisitions, and regardless of the source of funding for projects or acquisitions. Approval of capital projects and real property acquisitions shall

be on a basis consistent with the strategic agenda and the mission of the respective universities and the Kentucky Community and Technical College System.

- (b) The organized groups that are establishing community college satellites as branches of existing community colleges in the counties of Laurel, Leslie, and Muhlenberg, and that have substantially obtained cash, pledges, real property, or other commitments to build the satellite at no cost to the Commonwealth, other than operating costs that shall be paid as part of the operating budget of the main community college of which the satellite is a branch, are authorized to begin construction of the satellite on or after January 1, 1998;
- (12) Require reports from the executive officer of each institution it deems necessary for the effectual performance of its duties;
  - (13) Ensure that the state postsecondary system does not unnecessarily duplicate services and programs provided by private postsecondary institutions and shall promote maximum cooperation between the state postsecondary system and private postsecondary institutions. Receive and consider an annual report prepared by the Association of Independent Kentucky Colleges and Universities stating the condition of independent institutions, listing opportunities for more collaboration between the state and independent institutions and other information as appropriate;
  - (14) Develop a university track program within the Kentucky Community and Technical College System consisting of sixty (60) hours of instruction that can be transferred and applied toward the requirements for a bachelor's degree at the public universities. The track shall consist of general education courses and pre-major courses as prescribed by the council. Courses in the university track program shall transfer and apply toward the requirements for graduation with a bachelor's degree at all public universities. Successful completion of the university track program shall meet the academic requirement for transfer to a public university as a junior. By fall semester of 1997, requirements for track programs shall be established for all majors and baccalaureate degree programs;
  - (15) Define and approve the offering of all postsecondary education technical, associate, baccalaureate, graduate, and professional degree, certificate, or diploma programs in the public postsecondary education institutions. The council shall expedite wherever possible the approval of requests from the Kentucky Community and Technical College System board of regents relating to new certificate, diploma, technical, or associate degree programs of a vocational-technical and occupational nature. Without the consent of the General Assembly, the council shall not abolish or limit the total enrollment of the general program offered at any community college to meet the goal of reasonable access throughout the Commonwealth to a two (2) year course of general studies designed for transfer to a baccalaureate program. This does not restrict or limit the authority of the council, as set forth in this section, to eliminate or make changes in individual programs within that general program;
  - (16) Eliminate, in its discretion, existing programs or make any changes in existing academic programs at the state's postsecondary educational institutions, taking into consideration these criteria:
    - (a) Consistency with the institution's mission and the strategic agenda;
    - (b) Alignment with the priorities in the strategic implementation plan for achieving the strategic agenda;
    - (c) Elimination of unnecessary duplication of programs within and among institutions; and
    - (d) Efforts to create cooperative programs with other institutions through traditional means, or by use of distance learning technology and electronic resources, to achieve effective and efficient program delivery;
  - (17) Ensure the governing board and faculty of all postsecondary education institutions are committed to providing instruction free of discrimination against students who hold political views and opinions contrary to those of the governing board and faculty;
  - (18) Review proposals and make recommendations to the Governor regarding the establishment of new public community colleges, technical institutions, and new four (4) year colleges;
  - (19) Postpone the approval of any new program at a state postsecondary educational institution, unless the institution has met its equal educational opportunity goals, as established by the council. In accordance with administrative regulations promulgated by the council, those institutions not meeting the goals shall be able to obtain a temporary waiver, if the institution has made substantial progress toward meeting its equal educational opportunity goals;

- (20) Ensure the coordination, transferability, and connectivity of technology among postsecondary institutions in the Commonwealth including the development and implementation of a technology plan as a component of the strategic agenda;
- (21) Approve the teacher education programs in the public institutions that comply with standards established by the Education Professional Standards Board pursuant to KRS 161.028;
- (22) Constitute the representative agency of the Commonwealth in all matters of postsecondary education of a general and statewide nature which are not otherwise delegated to one (1) or more institutions of postsecondary learning. The responsibility may be exercised through appropriate contractual relationships with individuals or agencies located within or without the Commonwealth. The authority includes but is not limited to contractual arrangements for programs of research, specialized training, and cultural enrichment;
- (23) Maintain procedures for the approval of a designated receiver to provide for the maintenance of student records of the public institutions of higher education and the colleges as defined in KRS 164.945, and institutions operating pursuant to KRS 165A.310 which offer collegiate level courses for academic credit, which cease to operate. Procedures shall include assurances that, upon proper request, subject to federal and state laws and regulations, copies of student records shall be made available within a reasonable length of time for a minimum fee;
- (24) Monitor and transmit a report on compliance with KRS 164.351 to the director of the Legislative Research Commission for distribution to the Health and Welfare Committee;
- (25) Develop in cooperation with each state postsecondary educational institution a comprehensive orientation program for new members of the council and the governing boards. The orientation program shall include but not be limited to the information concerning the roles of the council, the strategic agenda and the strategic implementation plan, and the respective institution's mission, budget, plans, policies, strengths, and weaknesses;
- (26) Develop a financial reporting procedure to be used by all state postsecondary education institutions to ensure uniformity of financial information available to state agencies and the public;
- (27) Select and appoint a president of the council under KRS 164.013;
- (28) Employ consultants and other persons and employees as may be required for the council's operations, functions, and responsibilities;
- (29) Promulgate administrative regulations, in accordance with KRS Chapter 13A, governing its powers, duties, and responsibilities as described in this section;
- (30) Prepare and present by January 31 of each year an annual status report on postsecondary education in the Commonwealth to the Governor, the Strategic Committee on Postsecondary Education, and the Legislative Research Commission;
- (31) Consider the role, function, and capacity of independent institutions of postsecondary education in developing policies to meet the immediate and future needs of the state. When it is found that independent institutions can meet state needs effectively, state resources may be used to contract with or otherwise assist independent institutions in meeting these needs;
- (32) Create advisory groups representing the presidents, faculty, nonteaching staff, and students of the public postsecondary education system and the independent colleges and universities;
- (33) Develop a statewide policy to promote employee and faculty development in all postsecondary institutions and in state and locally operated secondary area technology centers through the waiver of tuition for college credit coursework in the public postsecondary education system. Any regular full-time employee of a postsecondary public institution or a state or locally operated secondary area technology center may, with prior administrative approval of the course offering institution, take a maximum of six (6) credit hours per term at any public postsecondary institution. The institution shall waive the tuition up to a maximum of six (6) credit hours per term;
- (34) Establish a statewide mission for adult education and develop a twenty (20) year strategy, in partnership with the Kentucky Adult Education Program, under the provisions of KRS 164.0203 for raising the knowledge and skills of the state's adult population. The council shall:

- (a) Promote coordination of programs and responsibilities linked to the issue of adult education with the Kentucky Adult Education Program and with other agencies and institutions;
  - (b) Facilitate the development of strategies to increase the knowledge and skills of adults in all counties by promoting the efficient and effective coordination of all available education and training resources;
  - (c) Lead a statewide public information and marketing campaign to convey the critical nature of Kentucky's adult literacy challenge and to reach adults and employers with practical information about available education and training opportunities;
  - (d) Establish standards for adult literacy and monitor progress in achieving the state's adult literacy goals, including existing standards that may have been developed to meet requirements of federal law in conjunction with the Collaborative Center for Literacy Development: Early Childhood through Adulthood; and
  - (e) Administer the adult education and literacy initiative fund created under KRS 164.041;~~and~~
- (35) (a) *Participate with the Kentucky Department of Education, the Kentucky Board of Education, and postsecondary education institutions to assure that academic content requirements for successful entry into postsecondary education programs are aligned with high school content standards and that students who master the high school academic content standards shall not need remedial courses. The council shall monitor the results on an ongoing basis; and*
- (b) *Cooperate with the Kentucky Department of Education and the Education Professional Standards Board in providing information sessions to selected postsecondary education content faculty and teacher educators of the high school academic content standards as required under subsection (2)(j) of Section 2 of this Act; and*
- (36) Exercise any other powers, duties, and responsibilities necessary to carry out the purposes of this chapter. Nothing in this chapter shall be construed to grant the Council on Postsecondary Education authority to disestablish or eliminate any college of law which became a part of the state system of higher education through merger with a state college.

➔Section 14. KRS 164.7874 is amended to read as follows:

As used in KRS 164.7871 to 164.7885:

- (1) "Academic term" means a semester or other time period specified in an administrative regulation promulgated by the authority;
- (2) "Academic year" means a period consisting of at least the minimum school term, as defined in KRS 158.070;
- (3) "ACT score" means the composite score achieved on the American College Test at a national test site on a national test date or the ACT exam administered statewide under KRS 158.6453(12)~~(4)~~(a)3., or an equivalent score, as determined by the authority, on the SAT administered by the College Board, Inc.;
- (4) "Authority" means the Kentucky Higher Education Assistance Authority;
- (5) "Award period" means the fall and spring consecutive academic terms within one (1) academic year;
- (6) "Council" means the Council on Postsecondary Education created under KRS 164.011;
- (7) "Eligible high school student" means any person who:
  - (a) Is a citizen, national, or permanent resident of the United States and Kentucky resident;
  - (b) Was enrolled after July 1, 1998:
    - 1. In a Kentucky high school for at least one hundred forty (140) days of the minimum school term unless exempted by the authority's executive director upon documentation of extreme hardship, while meeting the KEES curriculum requirements, and was enrolled in a Kentucky high school at the end of the academic year;
    - 2. In a Kentucky high school for the fall academic term of the senior year and who:
      - a. Was enrolled during the entire academic term;
      - b. Completed the high school's graduation requirements during the fall academic term; and

- c. Was not enrolled in a secondary school during any other academic term of that academic year; or
    - 3. In the Gatton Academy of Mathematics and Science in Kentucky while meeting the Kentucky educational excellence scholarship curriculum requirements;
  - (c) Has a grade point average of 2.5 or above at the end of any academic year beginning after July 1, 1998, or at the end of the fall academic term for a student eligible under paragraph (b) 2. of this subsection; and
  - (d) Is not a convicted felon;
- (8) "Eligible postsecondary student" means a citizen, national, or permanent resident of the United States and Kentucky resident, as determined by the participating institution in accordance with criteria established by the council for the purposes of admission and tuition assessment, who:
- (a) Earned a KEES award;
  - (b) Has the required postsecondary GPA and credit hours required under KRS 164.7881;
  - (c) Has remaining semesters of eligibility under KRS 164.7881;
  - (d) Is enrolled in a participating institution as a part-time or full-time student; and
  - (e) Is not a convicted felon;
- (9) "Full-time student" means a student enrolled in a postsecondary program of study that meets the full-time student requirements of the participating institution in which the student is enrolled;
- (10) "Grade point average" or "GPA" means the grade point average earned by an eligible student and reported by the high school or participating institution in which the student was enrolled based on a scale of 4.0 or its equivalent if the high school or participating institution that the student attends does not use the 4.0 grade scale;
- (11) "High school" means any Kentucky public high school, the Gatton Academy of Mathematics and Science in Kentucky, and any private, parochial, or church school located in Kentucky that has been certified by the Kentucky Board of Education as voluntarily complying with curriculum, certification, and textbook standards established by the Kentucky Board of Education under KRS 156.160;
- (12) "KEES" or "Kentucky educational excellence scholarship" means a scholarship provided under KRS 164.7871 to 164.7885;
- (13) "KEES award" means:
- (a) For an eligible high school student, the sum of the KEES base amount for each academic year of high school plus any KEES supplemental amount, as adjusted pursuant to KRS 164.7881; and
  - (b) For a student eligible under KRS 164.7879(3)(d), the KEES supplemental amount as adjusted pursuant to KRS 164.7881;
- (14) "KEES award maximum" means the sum of the KEES base amount earned in each academic year of high school plus any KEES supplemental amount earned;
- (15) "KEES base amount" or "base amount" means the amount earned by an eligible high school student based on the student's GPA pursuant to KRS 164.7879;
- (16) "KEES curriculum" means five (5) courses of study, except for students who meet the criteria of subsection (7)(b)2. of this section, in an academic year as determined in accordance with an administrative regulation promulgated by the authority;
- (17) "KEES supplemental amount" means the amount earned by an eligible student based on the student's ACT score pursuant to KRS 164.7879;
- (18) "KEES trust fund" means the Wallace G. Wilkinson Kentucky educational excellence scholarship trust fund;
- (19) "On track to graduate" means the number of cumulative credit hours earned as compared to the number of hours determined by the postsecondary education institution as necessary to complete a bachelor's degree by

the end of eight (8) academic terms or ten (10) academic terms if a student is enrolled in an undergraduate program that requires five (5) years of study;

- (20) "Participating institution" means an "institution" as defined in KRS 164.001 that actively participates in the federal Pell Grant program, executes a contract with the authority on terms the authority deems necessary or appropriate for the administration of its programs, and:
- (a)
    1. Is publicly operated;
    2. Is licensed by the Commonwealth of Kentucky and has operated for at least ten (10) years, offers an associate or baccalaureate degree program of study not comprised solely of sectarian instruction, and admits as regular students only high school graduates or recipients of a General Educational Development (GED) diploma or students transferring from another accredited degree granting institution; or
    3. Is designated by the authority as an approved out-of-state institution that offers a degree program in a field of study that is not offered at any institution in the Commonwealth; and
  - (b) Continues to commit financial resources to student financial assistance programs; and
- (21) "Part-time student" means a student enrolled in a postsecondary program of study who does not meet the full-time student requirements of the participating institution in which the student is enrolled and who is enrolled for at least six (6) credit hours, or the equivalent for an institution that does not use credit hours.

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *Within thirty (30) days from the effective date of this Act, each postsecondary education institution shall plan and implement a process to develop core academic content standards for reading and mathematics for introductory courses in the public postsecondary education institutions.*
- (2) *The process shall ensure that secondary educators are engaged with the postsecondary education faculty and other content specialists in order that the standards at each educational level are vertically aligned.*
- (3) *The Council on Postsecondary Education, the Department of Education, and the postsecondary education institutions are urged to merge activities, resources, and dissemination efforts as is practical to eliminate duplication of effort and conflicting recommendations.*
- (4) *All core academic standards for mathematics and reading in introductory courses shall be completed by December 15, 2010 with a target completion date of December 15, 2009 for the mathematics standards.*

➔Section 16. Whereas writing is an essential skill for all public school students to master; and whereas the 2009-2010 and 2010-2011 school years will be a transitional period for revising the content standards in all academic content areas and subsequently revising the state assessment and accountability system, writing portfolios shall remain a required and important instructional tool, but shall not be included in the accountability index as stated in Section 2.(11)(c) of this Act, during the 2008-2009, 2009-2010, and 2010-2011 school years.

(1) During this transitional period, each school-based decision making council, or if there is no school council, a committee appointed by the principal, shall determine its writing program and shall develop policies relating to the use of portfolios, using Section 2.(7)(c)5. of this Act as a guide.

(2) Once the Kentucky Department of Education provides the guidelines and program review requirements for implementation of program reviews of writing in the 2011-2012, each school shall comply with all requirements in Section 2.(11)(c) of this Act, based on time requirements established by the department.

➔Section 17. Whereas, the quality of writing instruction is directly related to how well teachers are prepared in their teacher preparation programs and how confident they are in the writing process; and whereas, some teachers have expressed tentativeness and discomfort in teaching writing to their students, the Education Professional Standards Board and the Kentucky Department of Education shall take actions during the 2009 and 2010 calendar years to improve instruction at the pre-service levels and to improve the ability to teach writing to existing teachers. At a minimum the following shall be completed:

(1) Using results from the state assessments relating to writing, including previous results of audits of writing portfolios, the Kentucky Department of Education and appropriate partners shall identify any major weaknesses that may be attributed to the quality of writing instruction and consider where and how these skills should best be taught to teachers;

(2) The Education Professional Standards Board shall conduct an analysis of the current requirements at the pre-service level for writing instruction and determine how writing instruction for prospective teachers can be enhanced or improved;

(3) The Education Professional Standards Board shall consider the feasibility of requiring a course in teacher preparation programs in the teaching of writing for pre-service teachers or teachers pursuing Rank II certification;

(4) The Kentucky Department of Education shall review the availability of professional development opportunities to help teachers learn how to improve writing instruction, and to use available resources, including the continuance of writing academies and writing workshops, to ensure that training for developing and evaluating high-quality writing portfolios and writing persuasive letters and articles, as well as poetry, short stories, memoirs, and personal narratives is available to existing teachers; and

(5) The Kentucky Department of Education shall provide training to administrators to help them provide leadership and support for an effective writing program within their schools.

➔Section 18. Whereas it is imperative that schools, administrators, teachers, parents, and policymakers maintain high expectations for Kentucky's students, and it is important that there be an orderly transition from the state assessment utilized on the effective date of this Act to the new assessment and accountability system is implemented in 2011-2012 so as to relieve teachers, schools, and administrators of unnecessary work, costs, and professional burdens, the following conditions shall apply:

(1) The Kentucky Board of Education shall provide for an interim assessment process as described in Section 19 of this Act;

(2) The board shall ensure that all student assessments and data collection and reporting necessary to meet the accountability and proficiency requirements for the federal No Child Left Behind Act (NCLB) are met;

(3) The board shall suspend the calculation of a state accountability index for 2008-2009, 2009-2010, and 2010-2011, but shall ensure that all federal accountability requirements are met;

(4) During the interim period the following shall apply for accountability purposes:

(a) Annual Yearly Progress results from the federal government's No Child Left Behind system shall be used to determine improvement of student achievement for both Title 1 and non-Title 1 schools;

(b) The federal definitions within the No Child Left Behind Act shall be applied to both Title 1 and non-Title 1 schools;

(c) State level assistance and resources shall be provided to Title 1 and non-Title 1 schools falling into the federal definitions of consequences in order to help schools improve student achievement; and

(d) Results of the interim tests shall be reported publicly.

(5) Notwithstanding the provisions of Section 19 of this Act, the board may use mathematics items developed using revised mathematics content standards during the spring of 2010 and administer an initial mathematics test, based on the revised standards during the 2010-2011 testing period to meet NCLB requirements, if approval is granted by the United States Department of Education;

(6) The Kentucky Department of Education shall develop and implement interim program assessments of writing programs, practical living skills and career studies, and arts and humanities in all schools during the transition period. The department shall finalize the process for program assessments for implementation during the 2011-2012 school year as required in Section 2 of this Act;

(7) The department and board shall ensure that teachers, administrators, and local board of education members are well informed of pending changes in the assessment and accountability system during the transition period and continue to stress the importance of the quality of opportunities for all Kentucky students; and

(8) The board shall take whatever steps necessary to provide for implementation of the revised system.

➔Section 19. (1) Prior to the development and implementation of a new state assessment system for 2011-2012, the Kentucky Board of Education and the Kentucky Department of Education shall provide for a systematic interim process that will lead to a new state student assessment program. The system will continue to include the high

school readiness examination in grade eight (8), the college readiness examination in grade ten (10), and the ACT examination in grade eleven (11) as described in Section 2. of this Act.

(2) The current Kentucky criterion-referenced test, which meets the requirements of the federal No Child Left Behind Act, excluding tests for arts and humanities, practical living skills and career studies, and writing portfolios, shall continue to be given for the same subjects in the same grades in the 2008-2009, 2009-2010, and 2010-2011 academic years until the new assessment program is implemented in the 2011-2012 academic year. During the 2009-2010 and 2010-2011 academic years the department shall reduce the length of the test by reviewing and eliminating unneeded test items.

(3) During the 2009-2010 and the 2010-2011 academic years, in addition to the Kentucky criterion-referenced test, there shall be a new stand-alone norm-referenced test in reading and mathematics in grades three (3) through seven (7). The test shall be valid and reliable at the individual student level.

(4) The Kentucky Board of Education shall promulgate administrative regulations outlining the procedures to be used during the interim testing process to ensure test security, including procedures for testing makeup days, and to comply with federal assessment requirements. During the interim, the testing window for the criterion-referenced test may be up to seven (7) days in 2008-2009 and up to six (6) days during the 2009-2010 and 2010-2011 school years with additional makeup days as determined by the state board.

(5) In the 2008-2009 academic year the Department of Education shall provide each district with a test booklet and scoring sheets for arts and humanities, practical living skills and career studies that may be used by a local district for a local formative or summative evaluation.

(6) During the 2009-2010 and the 2010-2011 academic years, the new stand-alone norm-referenced test in reading and mathematics in grades three (3) through seven (7) shall be given during the one (1) week before or the one (1) week after the established testing window.

➔Section 20. As the Kentucky Department of Education and Kentucky Board of Education carry out their roles in the revisions to the state assessment and accountability system for implementation in 2011-2012, they shall facilitate an extensive review of how exceptional children's needs are being met through the required student assessment process and how student assessment requirements for exceptional children potentially hamper or enhance intellectual and emotional growth of individual students. They shall assess how current assessment procedures for exceptional children and the reporting requirements affect school performance classifications and whether changes need to be made as the revised assessment and accountability system is developed.

➔Section 21. Whereas, the General Assembly finds the continuing high rates of high school students who require remediation at the postsecondary education level totally unacceptable and an unwarranted additional expense to the state, students, and parents who expect that completion of high school coursework should lead to successful entry and success in postsecondary education, the Council on Postsecondary Education, the Kentucky Board of Education and the Kentucky Department of Education are hereby directed to develop a unified strategy to reduce college remediation rates by at least fifty percent (50%) by 2014 from what they are in 2010 and increase the college completion rates of students enrolled in one (1) or more remedial classes by three percent (3%) annually from 2009 to 2014.

(1) A written plan to reduce the remediation rates and increase graduation rates shall be prepared no later than May 15, 2010. The written plan shall include:

- (a) Yearly goals;
- (b) Action strategies that will be used;
- (c) Timelines;
- (d) Assigned responsibilities for carrying out the strategies;
- (e) Reporting mechanisms.

(2) During the preparation of the plan, the agencies shall investigate whether the current requirements for assessing college readiness are providing needed information, whether additional diagnostic assessments are needed, particularly in mathematics at the high school level, and whether accelerated learning programs have actually been implemented as required by Section 6. of this Act to address students' needs for instructional interventions in English, reading, and mathematics.

(3) The council, the department, and board shall present the initial plan to the Interim Joint Committee on Education and the Interim Joint Committee on Appropriations and Revenue during the 2010 Interim. Thereafter they shall report annually the results of their efforts. When appropriate, the annual reports to the Interim committees shall include recommendations for legislative actions.

➔Section 22. Notwithstanding any statutory provisions to the contrary, the Kentucky Department of Education shall communicate to districts and schools that decisions about mathematics textbook purchases may be delayed until after the mathematics academic standards have been revised as required by Section 2 of this Act. The department shall allow off-list purchases in order to ensure that textbooks selected align with the revised mathematics academic standards.

➔Section 23. Whereas, the revision of academic content standards is a time-consuming, complex process, and the Kentucky Department of Education needs to initiate the process quickly, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by the Governor March 25, 2009.**

## CHAPTER 102

### (HB 5)

AN ACT relating to childhood hearing loss.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 211.645 is amended to read as follows:

As used in KRS 211.647 and 216.2970, unless the context requires otherwise:

- (1) "Cabinet" means the Cabinet for Health and Family Services;
- (2) "Commission" means the Commission for Children with Special Health Care Needs;
- (3) "***Permanent childhood hearing loss***"~~["Hard of hearing infant"]~~ means a ***hearing deficit identified in infancy or childhood***~~[child at birth with a significant hearing loss]~~ which prevents the acquisition of speech and language through normal channels;
- (4) "Auditory screening report" means a written evaluation of an auditory screening as required under KRS 216.2970;
- (5) "Infant at high risk ***for late onset, progressive hearing loss, or both***"~~[of hearing loss]~~ means a child at birth who is at a higher risk than normal of ***becoming deaf or***~~[being]~~ ***hard of hearing or having progressively worsening hearing*** due to one (1) or more of the following factors~~[present at birth]~~:
  - (a) Family history of a congenital hearing loss;
  - (b) Rubella or virus during pregnancy;
  - (c) ***Neonatal intensive care of more than five (5) days***~~[Congenital ear, nose, or throat anomalies]~~;
  - (d) Below-normal birth weight;
  - (e) ***Neonatal intensive care, regardless of the number of days, for any of the following conditions:***
    1. ***Extracorporeal membrane oxygenation (ECMO);***
    2. ***Assisted ventilation;***
    3. ***Exposure to ototoxic medications including but not limited to gentramycin and tobramycin, or loop diuretics, including but not limited to furosemide;***
    4. ***Hyperbilirubinemia that requires an exchange transfusion;***
    5. ***Syndromes associated with hearing loss and progressive or late onset hearing loss including but not limited to neurofibromatosis, osteopetrosis, and Usher, Waardenburg, Alport, Pendred, and Jervell and Lange-Nielson Syndromes;***

6. *Congenital ear, nose, or throat anomalies including but not limited to those involving the pinna, ear canal, ear tags, ear pits, and temporal bone;*
7. *Culture-positive postnatal infections associated with sensorineural hearing loss including, but not limited to, confirmed bacterial and viral meningitis*~~[Abnormal level of jaundice];~~
  - (f) ~~[Anoxia or apnea;~~
  - (g) ~~A low APGAR score derived from the evaluation of the infant's color, muscle tone, reflexes, pulse rate, and respiration; or~~
  - (h) ~~An auditory screening indicating a hearing loss; or~~
  - (g) *Any other factor identified by the American Medical Association the American Academy of Pediatrics, or the American Academy of Otolaryngology as a cause of late onset or progressive hearing loss.*

➔Section 2. KRS 211.647 is amended to read as follows:

- (1) The commission, on receipt of an auditory screening report of an infant from a hospital or alternative birthing center in accordance with KRS 216.2970 shall review each auditory screening report that indicates a potential hearing loss. The commission shall contact the parents to schedule follow-up evaluations or make a referral for evaluations within three (3) business days.
- (2) The commission shall secure information missing from birth certificates or hospital referral reports which is relevant to identifying infants with a hearing loss.
- (3) *The commission shall establish standards for infant audiological assessment and diagnostic centers based on accepted national standards including but not limited to the "Guidelines for the Audiologic Assessment of Children From Birth to 5 Years of Age" as published by the American Speech-Language-Hearing Association (ASHA) and the "Year 2007 Position Statement: Principles and Guidelines for Early Hearing Detection and Intervention Programs" as published by the Joint Committee on Infant Hearing (JCIH). The commission may promulgate administrative regulations in accordance with KRS Chapter 13A to establish the standards for the centers.*
- (4) *The commission shall maintain a list of approved infant audiological assessment and diagnostic centers that meet the standards established by the commission. An audiological assessment and diagnostic center included on the list shall meet the standards established by the commission. An approved center may voluntarily choose not to be included on the list.*
- (5) *An approved audiology assessment and diagnostic center shall agree to provide requested data to the commission for each infant evaluated and on any newly identified children ages birth to three (3) years with a permanent childhood hearing loss within forty-eight (48) hours and make a referral to the Kentucky Early Intervention System point of entry in the service area of the child's residence for services under KRS 200.664. A center shall submit documentation to the commission of a referral made to the Kentucky Early Intervention System. A referral received by the Kentucky Early Intervention System from a center shall be considered a referral from the commission.*
- (6) If the ~~audiological~~~~[hearing]~~ evaluation performed by the commission contains evidence of a hearing loss, within forty-eight (48) hours the commission shall:
  - (a) Contact the attending physician and parents *and provide information to the parents in an accessible format as supplied by the Kentucky Commission on Deaf and Hard of Hearing*; and
  - (b) Make a referral to the Kentucky Early Intervention System point of entry in the service area of the child's residence for services under KRS 200.664.
- ~~(7)~~~~(4)~~ The commission shall forward a report of ~~an audiological~~~~[a hearing]~~ evaluation that indicates a hearing loss, with no information that personally identifies the child, to:
  - (a) The Kentucky Commission on the Deaf and Hard of Hearing for census purposes; and
  - (b) The Kentucky Birth Surveillance Registry for information purposes.
- ~~(8)~~~~(5)~~ Cumulative demographic data of identified infants with a hearing loss shall be made available to agencies and organizations including~~[,]~~ but not limited to~~[,]~~ the Cabinet for Health and Family Services and the Early Childhood Development Authority, requesting the information for planning purposes.

➔Section 3. KRS 216.2970 is amended to read as follows:

- (1) As a condition of licensure or relicensure, all hospitals offering obstetric services and alternative birthing centers with at least forty (40) births per year shall provide an auditory screening for all infants using one (1) of the methods approved by the *Commission for Children with Special Health Care Needs* ~~Early Childhood Development Authority~~ by administrative regulation promulgated in accordance with KRS Chapter 13A.
- (2) An auditory screening report that indicates a finding of potential hearing loss shall be forwarded by the hospital or alternative birthing center within twenty-four (24) hours of receipt to the:
  - (a) Attending physician *or healthcare provider*;
  - (b) Parents; ~~and~~
  - (c) Commission for Children with Special Health Care Needs for evaluation or referral for further evaluation in accordance with KRS 211.647; *and*
  - (d) *Audiological assessment and diagnostic center approved by the commission if a follow-up assessment has been scheduled prior to the infant's discharge from the hospital.*
- (3) An auditory screening report that does not indicate a potential hearing loss shall be forwarded within one (1) week to the Commission for Children with Special Health Care Needs with no information that personally identifies the child.

➔Section 4. KRS 213.046 is amended to read as follows:

- (1) A certificate of birth for each live birth which occurs in the Commonwealth shall be filed with the local registrar within ten (10) days after such birth and shall be registered if it has been completed and filed in accordance with this section. All certificates shall be typewritten. No certificate shall be held to be complete and correct that does not supply all items of information called for in this section and in KRS 213.051, or satisfactorily account for their omission except as provided in KRS 199.570(3). If a certificate of birth is incomplete, the local registrar shall immediately notify the responsible person and require that person to supply the missing items, if that information can be obtained.
- (2) When a birth occurs in an institution or en route thereto, the person in charge of the institution or that person's designated representative, shall obtain the personal data, prepare the certificate, secure the signatures required, and file the certificate as directed in subsection (1) of this section or as otherwise directed by the state registrar within the required ten (10) days. The physician or other person in attendance shall provide the medical information required for the certificate and certify to the fact of birth within ten (10) days after the birth. If the physician or other person in attendance does not certify to the fact of birth within the ten (10) day period, the person in charge of the institution shall complete and sign the certificate.
- (3) When a birth occurs in a hospital or en route thereto to a woman who is unmarried, the person in charge of the hospital or that person's designated representative shall immediately before or after the birth of a child, except when the mother or the alleged father is a minor:
  - (a) Meet with the mother prior to the release from the hospital;
  - (b) Attempt to ascertain whether the father of the child is available in the hospital, and, if so, to meet with him, if possible;
  - (c) Provide written materials and oral, audio, or video materials about paternity;
  - (d) Provide forms necessary to voluntarily establish paternity;
  - (e) Provide a written and an oral, audio, or video description of the rights and responsibilities, the alternatives to, and the legal consequences of acknowledging paternity;
  - (f) Provide written materials and information concerning genetic paternity testing;
  - (g) Provide an opportunity to speak by telephone or in person with staff who are trained to clarify information and answer questions about paternity establishment;
  - (h) If the parents wish to acknowledge paternity, require the voluntary acknowledgment of paternity obtained through the hospital-based program be signed by both parents and be authenticated by a notary public;

- (i) Provide the unmarried mother, and, if possible, the father, with the affidavit of paternity form;
- (j) Upon both the mother's and father's request, help the mother and father in completing the affidavit of paternity form;
- (k) Upon both the mother's and father's request, transmit the affidavit of paternity to the local registrar in the county in which the birth occurred; and
- (l) In the event that the mother or the alleged father is a minor, information set forth in this section shall be provided in accordance with Civil Rule 17.03 of the Kentucky Rules of Civil Procedure.

If the mother or the alleged father is a minor, the paternity determination shall be conducted pursuant to KRS Chapter 406.

- (4) The voluntary acknowledgment-of-paternity forms designated by the Vital Statistics Branch shall be the only documents having the same weight and authority as a judgment of paternity.
- (5) The Cabinet for Health and Family Services shall:
  - (a) Provide to all public and private birthing hospitals in the state written materials *in accessible formats* and audio or video materials concerning paternity establishment forms necessary to voluntarily acknowledge paternity;
  - (b) Provide copies of a written description *in accessible formats* and an audio or video description of the rights and responsibilities of acknowledging paternity; and
  - (c) Provide staff training, guidance, and written instructions regarding voluntary acknowledgment of paternity as necessary to operate the hospital-based program.
- (6) When a birth occurs outside an institution, the certificate shall be prepared and filed by one (1) of the following in the indicated order of priority:
  - (a) The physician in attendance at or immediately after the birth; or, in the absence of such a person,
  - (b) Any other person in attendance at or immediately after the birth; or, in the absence of such a person,
  - (c) The father, the mother, or in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred or of the institution to which the child was admitted following the birth.
- (7) No physician, midwife, or other attendant shall refuse to sign or delay the filing of a birth certificate.
- (8) If a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in the Commonwealth, the birth shall be registered in the Commonwealth, and the place where the child is first removed shall be considered the place of birth. If a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in the Commonwealth, the birth shall be registered in the Commonwealth, but the certificate shall show the actual place of birth insofar as can be determined.
- (9) The following provisions shall apply if the mother was married at the time of either conception or birth or anytime between conception and birth:
  - (a) If there is no dispute as to paternity, the name of the husband shall be entered on the certificate as the father of the child. The surname of the child shall be any name chosen by the parents; however, if the parents are separated or divorced at the time of the child's birth, the choice of surname rests with the parent who has legal custody following birth.
  - (b) If the mother claims that the father of the child is not her husband and the husband agrees to such a claim and the putative father agrees to the statement, a three (3) way affidavit of paternity may be signed by the respective parties and duly notarized. The state registrar of vital statistics shall enter the name of a nonhusband on the birth certificate as the father and the surname of the child shall be any name chosen by the mother.
  - (c) If a question of paternity determination arises which is not resolved under paragraph (b) of this subsection, it shall be settled by the District Court.

- (10) The following provisions shall apply if the mother was not married at the time of either conception or birth or between conception and birth or the marital relationship between the mother and her husband has been interrupted for more than ten (10) months prior to the birth of the child:
- (a) The name of the father shall not be entered on the certificate of birth. The state registrar shall upon acknowledgment of paternity by the father and with consent of the mother pursuant to KRS 213.121, enter the father's name on the certificate. The surname of the child shall be any name chosen by the mother and father. If there is no agreement, the child's surname shall be determined by the parent with legal custody of the child.
  - (b) If an affidavit of paternity has been properly completed and the certificate of birth has been filed accordingly, any further modification of the birth certificate regarding the paternity of the child shall require an order from the District Court.
  - (c) In any case in which paternity of a child is determined by a court order, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.
  - (d) In all other cases, the surname of the child shall be any name chosen by the mother.
- (11) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate. In all cases, the maiden name of the gestational mother shall be entered on the certificate.
- (12) Any child whose surname was restricted prior to July 13, 1990, shall be entitled to apply to the state registrar for an amendment of a birth certificate showing as the surname of the child, any surname chosen by the mother or parents as provided under this section.
- (13) The birth certificate of a child born as a result of artificial insemination shall be completed in accordance with the provisions of this section.
- (14) Each birth certificate filed under this section shall include all Social Security numbers that have been issued to the parents of the child.
- (15) Either of the parents of the child, or other informant, shall attest to the accuracy of the personal data entered on the certificate in time to permit the filing of the certificate within ten (10) days prescribed in subsection (1) of this section.
- (16) When a birth certificate is filed for any birth that occurred outside an institution, the Cabinet for Health and Family Services shall forward information regarding the need for an auditory screening for an infant and a list of options available for obtaining an auditory screening for an infant. The list shall include the Commission for Children with Special Health Care Needs, local health departments as established in KRS Chapter 212, hospitals offering obstetric services, alternative birthing centers required to provide an auditory screening under KRS 216.2970, *audiological assessment and diagnostic centers approved by the Commission for Children with Special Health Care Needs in accordance with Section 2 of this Act* and licensed audiologists, and shall specify the hearing methods approved by the *Commission for Children with Special Health Care Needs* ~~Early Child Development Authority~~ in accordance with KRS 216.2970.

**Signed by the Governor March 27, 2009.**

## CHAPTER 103

### (HB 21)

AN ACT relating to motor vehicles.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 186.010 is amended to read as follows:

- (1) "Cabinet," as used in KRS 186.400 to 186.640, means the Transportation Cabinet; except as specifically designated, "cabinet," as used in KRS 186.020 to 186.270, means the Transportation Cabinet only with respect to motor vehicles, other than commercial vehicles; "cabinet," as used in KRS 186.020 to 186.270, means the Department of Vehicle Regulation when used with respect to commercial vehicles.

- (2) "Highway" means every way or place of whatever nature when any part of it is open to the use of the public, as a matter of right, license, or privilege, for the purpose of vehicular traffic.
- (3) "Manufacturer" means any person engaged in manufacturing motor vehicles who will, under normal conditions during the year, manufacture or assemble at least ten (10) new motor vehicles.
- (4) "Motor vehicle" means in KRS 186.020 to 186.260, all vehicles, as defined in paragraph (a) of subsection (8) of this section, which are propelled otherwise than by muscular power. As used in KRS 186.400 to 186.640, it means all vehicles, as defined in paragraph (b) of subsection (8) of this section, which are self-propelled. "Motor vehicle" shall not include a moped as defined in this section, **but shall include low-speed vehicles as defined in this section.**
- (5) "Moped" means either a motorized bicycle whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank so long as it also has pedals, or a motorized bicycle with a step-through type frame which may or may not have pedals rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour.
- (6) "Operator" means any person in actual control of a motor vehicle upon a highway.
- (7) (a) "Owner" means a person who holds the legal title of a vehicle or a person who pursuant to a bona fide sale has received physical possession of the vehicle subject to any applicable security interest.  
(b) A vehicle is the subject of an agreement for the conditional sale or lease, with the vendee or lessee entitled to possession of the vehicle, upon performance of the contract terms, for a period of three hundred sixty-five (365) days or more and with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, the conditional vendee or lessee or mortgagor shall be deemed the owner.  
(c) A licensed motor vehicle dealer who transfers physical possession of a motor vehicle to a purchaser pursuant to a bona fide sale, and complies with the requirements of KRS 186A.220, shall not be deemed the owner of that motor vehicle solely due to an assignment to his dealership or a certificate of title in the dealership's name. Rather, under these circumstances, ownership shall transfer upon delivery of the vehicle to the purchaser, subject to any applicable security interest.
- (8) (a) "Vehicle," as used in KRS 186.020 to 186.260, includes all agencies for the transportation of persons or property over or upon the public highways of this Commonwealth and all vehicles passing over or upon said highways, excepting road rollers, road graders, farm tractors, vehicles on which power shovels are mounted, such other construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways, such vehicles as travel exclusively upon rails, and such vehicles as are propelled by electric power obtained from overhead wires while being operated within any municipality or where said vehicles do not travel more than five (5) miles beyond the city limit of any municipality.  
(b) As used in KRS 186.400 to 186.640, "vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human and animal power or used exclusively upon stationary rails or tracks, or which derives its power from overhead wires.
- (9) KRS 186.020 to 186.270 apply to motor vehicle licenses. KRS 186.400 to 186.640 apply to operator's licenses.
- (10) "Dealer" means any person engaging in the business of buying or selling motor vehicles.
- (11) "Commercial vehicles" means all motor vehicles that are required to be registered under the terms of KRS 186.050, but not including vehicles primarily designed for carrying passengers and having provisions for not more than nine (9) passengers (including driver), motorcycles, sidecar attachments, pickup trucks and passenger vans which are not being used for commercial or business purposes, and motor vehicles registered under KRS 186.060.
- (12) "Resident" means any person who has established Kentucky as his or her state of domicile. Proof of residency shall include but not be limited to a deed or property tax bill, utility agreement or utility bill, or rental housing

agreement. The possession by an operator of a vehicle of a valid Kentucky operator's license shall be prima-facie evidence that the operator is a resident of Kentucky.

- (13) "Special status individual" means:
- (a) "Asylee" means any person lawfully present in the United States who possesses an I-94 card issued by the United States Department of Justice, Immigration and Naturalization Service, on which it states "asylum status granted indefinitely pursuant to Section 208 of the Immigration & Nationality Act";
  - (b) "K-1 status" means the status of any person lawfully present in the United States who has been granted permission by the United States Department of Justice, Immigration and Naturalization Service to enter the United States for the purpose of marrying a United States citizen within ninety (90) days from the date of that entry;
  - (c) "Refugee" means any person lawfully present in the United States who possesses an I-94 card issued by the United States Department of Justice, Immigration and Naturalization Service, on which it states "admitted as a refugee pursuant to Section 207 of the Immigration & Nationality Act"; and
  - (d) "Paroled in the Public Interest" means any person lawfully present in the United States who possesses an I-94 card issued by the United States Department of Justice, Immigration and Naturalization Service, on which it states "paroled pursuant to Section 212 of the Immigration & Nationality Act for an indefinite period of time."
- (14) "Instruction permit" includes both motor vehicle instruction permits and motorcycle instruction permits.
- (15) "Motorcycle" means any motor driven vehicle having a seat or saddle for the use of the operator and designed to travel on not more than three (3) wheels in contact with the ground, ~~including but excluding tractors and~~ vehicles on which the operator and passengers ride in an enclosed cab. **Motorcycle shall include an alternative-speed motorcycle as defined in this section, but shall not include a tractor, or** ~~and excluding~~ a moped as defined in this section.
- (16) "**Low-speed vehicle**" means a motor vehicle that:
- (a) *Is self-propelled using an electric motor, combustion driven motor, or a combination thereof;*
  - (b) *Is four (4) wheeled; and*
  - (c) *Is designed to operate at a speed not to exceed twenty-five (25) miles per hour as certified by the manufacturer.*
- (17) "**Alternative-speed motorcycle**" means a motorcycle that:
- (a) *Is self-propelled using an electric motor, combustion driven motor, or a combination thereof;*
  - (b) *Is three (3) wheeled;*
  - (c) *Has a fully enclosed cab and includes at least one door for entry; and*
  - (d) *Is designed to operate at a speed not to exceed forty (40) miles per hour as certified by the manufacturer.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 189 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "low-speed vehicle" shall have the same meaning as in Section 1 of this Act.*
- (2) *A person may operate a low-speed vehicle on a highway if:*
  - (a) *The vehicle meets the federal motor vehicle safety standards for low-speed vehicles set forth in 49 CFR sec. 571.500;*
  - (b) *The vehicle displays a seventeen (17) character vehicle identification number that meets the requirements set forth in 49 CFR 565;*
  - (c) *The posted speed limit of the highway is thirty-five (35) miles per hour or less;*
  - (d) *The operator of the low-speed vehicle does not cross a roadway at an at-grade intersection where the roadway being crossed has a posted speed limit of more than thirty-five (35) miles per hour unless the intersection is equipped with an electronic traffic signal;*

- (e) *The operator has a valid operator's license in his or her possession; and*
  - (f) *The low-speed vehicle has not been modified to increase its speed above its original standard manufactured limit.*
- (3) *A low-speed vehicle operating on a highway shall be insured in compliance with KRS 304.39-080 by the owner or operator, and the proof of insurance shall be inside the vehicle at all times of operation on a highway.*
  - (4) *A low-speed vehicle operating on a highway is considered to be a motor vehicle as defined in Section 1 of this Act and shall be titled in accordance with KRS Chapter 186A and registered as a motor vehicle in accordance with KRS 186.050(3)(a).*
  - (5) *An operator of a low-speed vehicle operating on a highway shall comply with the traffic regulations of KRS Chapter 189 and shall be subject to the provisions of KRS Chapter 189A.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 189 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "alternative-speed motorcycle" shall have the same meaning as in Section 1 of this Act.*
- (2) *A person may operate an alternative-speed motorcycle on a highway if:*
  - (a) *The motorcycle bears a sticker, affixed by the manufacturer or dealer, on the left side of the rear window that indicates the vehicle's maximum speed rating;*
  - (b) *The motorcycle is equipped with:*
    - 1. *Headlights, front and rear turn signal lights, taillights, and break lights;*
    - 2. *Three (3) red reflectors, two (2) of which must be placed on each side as far to the rear of the vehicle as practicable, and one (1) of which must be placed on the rear of the vehicle;*
    - 3. *An exterior mirror mounted on the driver's side of the vehicle and either an exterior mirror mounted on the passenger's side of the vehicle or an interior mirror;*
    - 4. *A parking brake;*
    - 5. *A windshield that conforms to the federal motor vehicle safety standard provided in 49 CFR 571.205;*
    - 6. *A seatbelt assembly that conforms to the federal motor vehicle safety standard provided in 49 CFR 571.209; and*
    - 7. *A roll bar, roll cage, or crush-proof body design;*
  - (c) *The posted speed limit of the highway is thirty-five (35) miles per hour or less;*
  - (d) *The operator of the alternative-speed vehicle does not cross a roadway at an at-grade intersection where the roadway being crossed has a posted speed limit of more than thirty-five (35) miles per hour unless the intersection is equipped with an electronic traffic signal;*
  - (e) *The operator has a valid motorcycle operator's license in his or her possession; and*
  - (f) *The alternative-speed motorcycle has not been modified to increase its speed above its original standard manufactured limit.*
- (3) *An alternative-speed motorcycle operating on a highway shall be insured in compliance with KRS 304.39-080 by the owner or operator, and the proof of insurance shall be inside the vehicle at all times of operation on a highway.*
- (4) *An alternative-speed motorcycle operating on a highway is considered to be a motorcycle as defined in Section 1 of this Act and shall be titled in accordance with KRS Chapter 186A and registered as a motorcycle in accordance with KRS 186.050(2).*
- (5) *An operator of an alternative-speed motorcycle shall be exempt from the protective headgear requirements of KRS 189.285.*

- (6) *Except as provided in this section, an operator of an alternative-speed motorcycle operating on a highway shall comply with the traffic regulations of KRS Chapter 189 and shall be subject to the provisions of KRS Chapter 189A.*

➔ Section 4. KRS 190.010 is amended to read as follows:

As used in KRS 190.010 to 190.990:

- (1) "Manufacturer" means any person, partnership, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new motor vehicles, or imports for distribution through distributors of new motor vehicles, or any partnership, firm, association, joint venture, corporation, or trust, resident or nonresident, which is controlled by the manufacturer. Additionally, the term "manufacturer" shall include the following terms:
  - (a) "Distributor" which means any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers, or who maintains factory representatives, or who controls any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers;
  - (b) "Factory branch" which means a branch office maintained by a manufacturer for the purpose of selling, or offering for sale, new motor vehicles to a distributor, wholesaler, or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives, and shall further include any sales promotion organization, whether the same be a person, firm, or corporation, which is engaged in promoting the sale of new motor vehicles in this state of a particular brand or make to new motor vehicle dealers;
  - (c) "Factory representative" which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of his, its, or their new motor vehicles, or for supervising or contracting with his, its, or their dealers, or prospective dealers;
  - (d) "Distributor branch" which means a branch office similarly maintained by a distributor or wholesaler for the same purposes; and
  - (e) "Distributor representative" which means a representative similarly employed by a distributor, distributor branch, or wholesaler;
- (2) "Motor vehicle dealer" means any person not excluded by subsection (3) of this section, engaged in the business of selling, offering to sell, soliciting, or advertising the same, of new or used motor vehicles, or possessing motor vehicles for the purpose of resale, either on his own account, or on behalf of another, either as his primary business or incidental thereto;
- (3) The term "motor vehicle dealer" shall not include:
  - (a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court, and any bank, trust company, or lending institution that is subject to state or federal regulation, with regard to its disposition of repossessed motor vehicles;
  - (b) Public officers while performing their official duties; or
  - (c) Employees of persons enumerated in paragraphs (a) and (b) of this subsection, when engaged in the specific performance of their duties as employees;
- (4) "New motor vehicle dealer" means a vehicle dealer who holds a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the manufacturer's new motor vehicles;
- (5) "New motor vehicle dealership facility" means an established place of business which is being used or will be used primarily for the purpose of selling, buying, displaying, repairing, and servicing motor vehicles;
- (6) "Used motor vehicle dealer" means any person engaged in the business of selling at retail, displaying, offering for sale, or dealing in used motor vehicles, but shall not mean any person engaged in the business of dismantling, salvaging, or rebuilding motor vehicles by means of using used parts, or any public officer performing his official duties;

- (7) "Motor vehicle leasing dealer" means any person engaged in the business of regularly making available, offering to make available, or arranging for another person to use a motor vehicle pursuant to a bailment, lease, or other contractual arrangement under which a charge is made for its use at a periodic rate for at least a monthly term, and title to the motor vehicle is in a person other than the user, but shall not mean a manufacturer or its affiliate leasing to its employees or to dealers;
- (8) "Restricted motor vehicle dealer" means a motor vehicle dealer who exclusively sells, offers to sell, solicits, or advertises specialized motor vehicles including, but not limited to, funeral coaches, emergency vehicles, and an automotive recycling dealer engaged in the business of dismantling, salvaging, or recycling salvage motor vehicles for the purpose of harvesting used parts, components, assemblies, and recyclable materials for resale, reuse, or reclamation;
- (9) "Motorcycle dealer" means a motor vehicle dealer who exclusively sells, offers to sell, solicits, or advertises motorcycles, *including alternative-speed motorcycles as defined in Section 1 of this Act*. Motorcycles shall not include mopeds as defined in this section;
- (10) "Motor vehicle salesman" means any person who is employed as a salesman by a motor vehicle dealer to sell motor vehicles, or who is employed as an auctioneer by a motor vehicle auction dealer to sell motor vehicles at auction;
- (11) "Motor vehicle auction dealer" means any person primarily engaged in the business of offering, negotiating, or attempting to negotiate a sale, purchase, or exchange of a motor vehicle through auction;
- (12) "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways that is self-propelled *including low-speed motor vehicles as defined in Section 1 of this Act*, but shall not include farm tractors and other machines and tools used in the production, harvesting, and care of farm products;
- (13) "New motor vehicle" means a vehicle that is in the possession of the manufacturer, distributor, or wholesaler, or has been sold to the holders of a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the make of new vehicle, which is new, and on which the original title has not been issued from the franchised dealer;
- (14) "Moped" means a motorized bicycle with pedals whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank, or a motorized bicycle with pedals and with a step through type frame rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;
- (15) "Commission" means the Motor Vehicle Commission;
- (16) "Commissioner" means the commissioner of the department;
- (17) "Department" means the Department of Vehicle Regulation;
- (18) "Licensor" means the commission;
- (19) "Established place of business" means a permanent, enclosed commercial building located within this state, easily accessible and open to the public at all reasonable times, and at which the business of a vehicle dealer, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning, and other land use regulatory ordinances;
- (20) "Person" means a person, partnership, firm, corporation, association, trust, estate, or other legal entity;
- (21) "Franchise" means the agreement or contract between any new motor vehicle manufacturer, written or otherwise, and any new motor vehicle dealer that purports to fix the legal rights and liabilities of the parties to an agreement or contract, and pursuant to which the dealer purchases and resells the franchise product;
- (22) "Good faith" means honesty in fact, and the observance of reasonable commercial standards of fair dealing in the trade, as is defined and interpreted in KRS 355.2-103(1)(b);
- (23) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will; or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership; or who, under the laws of intestate succession of this state is entitled to inherit the interest; or who, in the case of an incapacitated dealer, has been appointed by a court as the legal

representative of the dealer's property. The term includes the appointed and qualified personal representative and testamentary trustee of a deceased dealer;

- (24) "Fraud" means a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made in good faith; or an intentional failure to disclose material fact;
- (25) "Sale" means the issuance, transfer, agreement for transfer, exchange, lease, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest in it, or of any franchise related to it, as well as any option, subscription, other contract, or solicitation looking to a sale, offer to attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto, with or as a bonus on account of the sale of anything, shall be deemed a sale of the motor vehicle or franchise;
- (26) "Automotive mobility dealer" means any motor vehicle dealer who:
- (a) Exclusively engages in the business of selling, offering to sell, or soliciting or advertising the sale of adapted vehicles;
  - (b) Possesses adapted vehicles exclusively for the purpose of resale, either on his or her own account or on behalf of another, as his or her primary business or incidental thereto; or
  - (c) Engages in the business of selling, installing, or servicing; offering to sell, install, or service; or soliciting or advertising the sale, installation, or servicing of equipment or modifications specifically designed to facilitate use or operation of a motor vehicle by an aging or disabled person;
- (27) "Adapted vehicle" means a new or used motor vehicle especially designed or modified for use by an aging or disabled person; and
- (28) "Mobility equipment" means equipment specifically designed to facilitate the use of a motor vehicle by an aging or disabled person.

**Signed by the Governor March 27, 2009.**

## CHAPTER 104

### (HB 106)

AN ACT relating to mortgages.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. KRS 286.8-010 is amended to read as follows:

As used in this subtitle, unless the context otherwise requires:

- (1) "Affiliate" means any person who directly or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with another person;
- (2) "Office" means the Office of Financial Institutions;
- (3) "Executive director" means the executive director of the office;
- (4) ***"Applicant" means a person filing an application or renewal application for a license, registration, or claim of exemption under this subtitle;***
- (5) ***"Borrower" means any person that seeks, applies for, or obtains a mortgage loan;***
- (6) ***"Branch" or "branches" means any location other than the mortgage loan company's or mortgage loan broker's principal location where the mortgage loan company, mortgage loan broker, or its employees maintain a physical presence for the purpose of conducting business in the mortgage lending process, including the servicing of mortgage loans;***
- (7) ***"Classroom" means a physical classroom environment in which teachers and participants are physically present for the teaching of a course. Courses taught through Internet, mail, or correspondence classes shall not be considered to be courses taught in a classroom;***

- (8) *"Clerical or support duties" mean administrative functions such as gathering information, requesting information, word processing, sending correspondence, or assembling files, and may include:*
- (a) *The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; or*
  - (b) *Any communication with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include taking a residential mortgage loan application, offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms;*
- (9) *"Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise;*
- (10) *"Control records" mean all records relating to the operation of a branch that are necessary to exercise control and supervision over the branch;*
- (11) *"Criminal syndicate" means five (5) or more persons collaborating to promote or engage in any pattern of residential mortgage fraud on a continuing basis;*
- (12) *"Depository institution" means a depository institution as defined in the Federal Deposit Insurance Act, 12 U.S.C. sec. 1813(c), and amendments thereto, and includes any credit union;*
- (13) *"Employ or use" means to employ, utilize, or contract with a person or the person's employees for the purpose of participating in the mortgage lending process, including the servicing of mortgage loans;*
- (14) *"Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild;*
- (15) *"Licensee" means a person to whom a license has been issued;*
- (16) *"Managing principal" means a natural person who meets the requirements of subsection (6) of Section 5 of this Act and who agrees to actively participate in and be primarily responsible for the operations of a licensed mortgage loan broker;*
- (17) *"Mortgage lending process" means the process through which a person seeks or obtains a mortgage loan, including the solicitation, application, origination, negotiation of terms, processing, underwriting, signing, closing, and funding of a mortgage loan and the services provided incident to a mortgage loan, including the appraisal of the residential real property. Documents involved in the mortgage lending process include but are not limited to:*
- (a) *Uniform residential loan applications or other loan applications;*
  - (b) *Appraisal reports;*
  - (c) *Settlement statements;*
  - (d) *Supporting personal documentation for loan applications, including:*
    - 1. *Form W-2 or other earnings or income statements;*
    - 2. *Verifications of rent, income, and employment;*
    - 3. *Bank statements;*
    - 4. *Tax returns; and*
    - 5. *Payroll stubs;*
  - (e) *Any required mortgage-related disclosures; and*
  - (f) *Any other document required as a part of, or necessary to, the mortgage lending process;*
- (18) ~~(4)~~ *"Mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, ~~or~~ deed of trust, or other equivalent consensual security interest on residential real property or any loan primarily for personal, family, or household use that is secured by collateral that has a mortgage lien interest in residential real property;*
- (19) *"Mortgage loan broker" means any person who for compensation or gain, or in the expectation of compensation or other gain, received directly or indirectly, serves as an agent for any borrower in an attempt to obtain a mortgage loan, or holds oneself out as being able to do so;*

- (20) *"Mortgage loan company" means any person who directly or indirectly:*
- (a) *Makes, purchases, or sells mortgage loans, or holds oneself out as being able to do so; or*
  - (b) *Services mortgage loans, or holds oneself out as being able to do so;*
- (21) *"Mortgage loan originator" means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain:*
- (a) *Performs any one (1) or more of the following acts in the mortgage lending process:*
    1. *Solicits, places, negotiates, or offers to make a mortgage loan;*
    2. *Obtains personal and financial information from a borrower or prospective borrower;*
    3. *Assists a borrower or prospective borrower with the preparation of a mortgage loan or related documents;*
    4. *Explains, recommends, discusses, negotiates, or quotes rates, terms, and conditions of a mortgage loan with a borrower or prospective borrower, whether or not the borrower or prospective borrower makes or completes an application;*
    5. *Explains any term or aspect of any disclosure or agreement given at or after the time a mortgage loan application is received; or*
    6. *Takes a residential mortgage loan application; or*
  - (b) *Is an independent contractor engaging in the mortgage lending process as a mortgage loan processor;*
- (22) *"Mortgage loan processor" means a natural person who performs only clerical or support duties at the direction of and subject to the supervision and instruction of a mortgage loan originator;*
- (23) *"Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators;*
- (24) *"Originate" means to solicit, place, negotiate, offer to make, or broker a mortgage loan;*
- (25) *"Pattern of residential mortgage fraud" means residential mortgage fraud that involves two (2) or more mortgage loans that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics;*
- (26) *"Person" means a natural person, or any type or form of corporation, company, partnership, proprietorship, or association;*
- (27) *"Physical location" means any location where the mortgage lending process, including the servicing of mortgage loans, is conducted;*
- (28) *"Record" means any books of account or other books, papers, journals, ledgers, statements, instruments, documents, files, messages, writings, correspondence, or other internal data or information, made or received in the regular course of business or otherwise, regardless of the mode in which it is recorded;*
- (29) *"Registrant" means a person to whom a certificate of registration has been issued;*
- (30) *"Residential mortgage loan application" means the submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a mortgage loan;*
- (31) ~~(5)~~ *"Residential real property" means a dwelling as defined in the Federal Truth in Lending Act, 15 U.S.C. sec. 1602(v), or any real property upon which is constructed or intended to be constructed a dwelling as so defined ~~{any single family residence or multiple dwelling structure containing four (4) or fewer single dwelling units for four (4) or fewer family units living independently of each other; or any single family condominium unit; or any single family cooperative};~~*
- (32) *"Service or servicing" means:*
- (a) *Receiving any scheduled periodic mortgage loan payments from a borrower, including amounts for escrow accounts or other fees or obligations related to the mortgage loan, and making or crediting*

*the payments to the mortgage loan account, owner of the loan, or a third party assigned to receive said payments;*

- (b) *Maintaining accountings of principal, interest, and other accounts associated with the servicing of mortgage loans and responding to borrower inquiries regarding the status of these loans or accounts;*
  - (c) *Initiating, supervising, or conducting foreclosure proceedings and property dispositions in the case of default, except this shall not include licensed attorneys representing clients in such matters; or*
  - (d) *In the case of a home equity conversion mortgage or reverse mortgage, making payments to the borrower;*
- (33) *"Takes a residential mortgage loan application" means:*
- (a) *Recording the borrower's application information in any form for use in a credit decision; or*
  - (b) *Receiving the borrower's application information in any form for use in a credit decision;*
- (34) *"Transact or transacting business in Kentucky" means to participate in any meaningful way in the mortgage lending process, including the servicing of mortgage loans, with respect to any residential real property located in Kentucky;*
- (35) *"Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry; and*
- (36) *"Wholly owned subsidiary" means a subsidiary that is entirely owned or controlled by another person.*
- ~~(6) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust where the interest of the beneficiaries is evidenced by a security, an unincorporated organization, a government, a political subdivision of a government, or any other group however organized;~~
- ~~(7) "Mortgage loan company" means any person who directly or indirectly:~~
- ~~(a) Holds himself out as being able to make or purchase loans secured by mortgages on residential real property;~~
  - ~~(b) Holds himself out as being able to service loans secured by mortgages on residential real property; or~~
  - ~~(c) Holds himself out as being able to buy or sell notes secured by mortgages on residential real property;~~
- ~~(8) "Mortgage loan broker" means any person who for compensation or gain, or in the expectation of compensation or other gain, received directly or indirectly, holds himself out as being able to serve as an agent for any person in an attempt to obtain a loan that will be secured by a mortgage on residential real property;~~
- ~~(9) "Mortgage loan originator" means an individual who:~~
- ~~(a) Provides services to one (1) and not more than one (1) mortgage loan company or mortgage loan broker;~~
  - ~~(b) Is subject to the supervision and control of that mortgage loan company or mortgage loan broker; and~~
  - ~~(c) In exchange for compensation by that mortgage loan company or mortgage loan broker, performs any one (1) or more of the following acts in the mortgage lending process:~~
    - ~~1. Solicits, places, negotiates, originates, or offers to make a mortgage loan for a mortgage loan company or mortgage loan broker;~~
    - ~~2. Obtains personal and financial information from a borrower or prospective borrower;~~
    - ~~3. Assists a borrower or prospective borrower with the preparation of a mortgage loan or related documents;~~
    - ~~4. Explains, recommends, discusses, or quotes rates, terms, and conditions of a mortgage loan with a borrower or prospective borrower, whether or not the borrower or prospective borrower makes or completes an application; or~~
    - ~~5. Explains any term or aspect of any disclosure or agreement given at or after the time a mortgage loan application is received;~~

- (10) ~~"Mortgage loan processor" means an individual who works under the instruction of a mortgage loan originator and performs only clerical functions such as gathering information, requesting information, word processing, sending correspondence, or assembling files, and may or may not perform any of the duties or responsibilities of a mortgage loan originator in the mortgage loan lending process;~~
- (11) ~~"Classroom" means a physical classroom environment in which teachers and participants are physically present for the teaching of a course. Courses taught through Internet, mail, or correspondence classes shall not be considered to be courses taught in a classroom;~~
- (12) ~~"Mortgage lending process" means the process through which a person seeks or obtains a mortgage loan, including the solicitation, application, origination, negotiation of terms, underwriting, signing, closing, and funding of a mortgage loan and the services provided incident to a mortgage loan, including the appraisal of the residential real property. Documents involved in the mortgage lending process include but are not limited to:~~
- ~~(a) Uniform residential loan applications or other loan applications;~~
  - ~~(b) Appraisal reports;~~
  - ~~(c) Settlement statements;~~
  - ~~(d) Supporting personal documentation for loan applications, including:
 
    - ~~1. Form W 2 or other earnings or income statements;~~
    - ~~2. Verifications of rent, income, and employment;~~
    - ~~3. Bank statements;~~
    - ~~4. Tax returns; and~~
    - ~~5. Payroll stubs;~~~~
  - ~~(e) Any required mortgage related disclosures; and~~
  - ~~(f) Any other document required as a part of, or necessary to, the mortgage lending process;~~
- (13) ~~"Pattern of residential mortgage fraud" means residential mortgage fraud that involves two (2) or more mortgage loans that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics;~~
- (14) ~~"Branch" or "branches" means any location other than the mortgage loan company's or mortgage loan broker's principal location where the mortgage loan company, mortgage loan broker, or its employees maintain a physical presence for the purpose of conducting business in the mortgage lending process in which the property subject to the mortgage loan process is residential real property located in Kentucky;~~
- (15) ~~"Registrant" means a person to whom a certificate of registration has been issued;~~
- (16) ~~"Licensee" means a person to whom a license has been issued;~~
- (17) ~~"Criminal syndicate" means five (5) or more persons collaborating to promote or engage in any pattern of residential mortgage fraud on a continuing basis;~~
- (18) ~~"Physical location" means any location where the mortgage lending process is conducted. The physical location where the mortgage lending process is conducted shall have a street address. A post office box or similar designation shall not meet the requirements of this subsection. The physical location shall be accessible to the general public as a place of business, unless the physical location is a residence and proof of residence has been submitted as required by KRS 286.8-032(8); and~~
- (19) ~~"Applicant" means a person filing an application or renewal application for a license, registration, or claim of exemption under this subtitle.]~~

➔ Section 2. KRS 286.8-020 is amended to read as follows:

- (1) The following *mortgage loan companies and mortgage loan brokers* shall be *subject to KRS 286.8-180, Section 8 of this Act, subsection (1) of Section 14 of this Act, and subsections (12), (13), and (14) of this section, but shall be exempt from all other provisions of this subtitle:*

- (a) Any person duly licensed, chartered, ~~and~~ otherwise subject to regular examination at least once every two (2) years by a state or federal financial institution regulatory agency under the laws of this state or any other state or the United States as a bank, bank holding company, trust company, credit union, savings and loan association, *savings and loan association holding company*, service corporation subsidiary of a savings and loan association, insurance company, real estate investment trust as defined in 26 U.S.C. sec. 856, an institution of the farm credit system organized under the Farm Credit Act of 1971 as amended, or any wholly owned subsidiary of any such person *if the subsidiary is subject to regular examination at least once every two (2) years by a state or federal financial institution regulatory agency*. ~~Any mortgage loan originator or mortgage loan processor employed by any such person, or by a wholly owned subsidiary of any person listed in this paragraph, shall also be exempt;~~
- (b) *Any natural person who makes a mortgage loan secured by a dwelling that served as the natural person's residence, unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator*~~[An attorney at law licensed to practice law in Kentucky who is not principally engaged in the business of negotiating mortgage loans, when the person renders services in the course of his practice as an attorney at law];~~
- (c) *Any natural person who makes a mortgage loan to an immediate family member of the natural person unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator*~~[person doing any act under order of any court];~~
- (d) The United States of America; the Commonwealth of Kentucky; any other state, district, territory, commonwealth, or possession of the United States of America; any city, county, or other political subdivision; and any agency, division, or corporate instrumentality of any of the foregoing;
- (e) The Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA);
- (f) Any *mortgage loan company or mortgage loan broker making or brokering a mortgage loan* involving housing initially transferred by certificate of title under KRS Chapter 186A;
- (g) A consumer loan or finance company or an industrial loan company licensed under Subtitle 4 or 7 of this chapter whose primary business is originating consumer or industrial loans as provided under Subtitle 4 or 7 of this chapter ~~or~~ any wholly owned subsidiary of such a consumer loan or finance company or an industrial loan company~~[- any mortgage loan broker, loan officer, originator, or loan processor employed by any such person; or by a wholly owned subsidiary of any such consumer loan or finance company or an industrial loan company]~~, except that they shall be subject to the prohibited acts of KRS 286.8-220(2)(e) and (f) and 286.8-110(4); and
- (h) A nonprofit organization that is recognized as tax-exempt under 26 U.S.C. sec. 501(c)(3) and authorized to do business in this Commonwealth, and that has affordable housing as a primary purpose in its operations.~~[Any mortgage loan originator or mortgage loan processor who is an employee of a mortgage loan company, mortgage loan broker, or nonprofit organization shall be subject to the provisions of KRS 286.8-255 and 286.8-260.]~~
- (2) The following shall ~~comply with all provisions of this subtitle but shall~~ be exempt from the licensing ~~and examination~~ provisions of this subtitle, *the examination provisions of Section 12 of this Act and KRS 286.8-180, unless it appears on grounds satisfactory to the executive director that an examination is necessary, but shall otherwise be subject to all other provisions of this subtitle*:~~[- The following shall be subject to the examination provisions of KRS 286.8-170(4) and (5) and 286.8-180, if it appears on grounds satisfactory to the executive director that an examination is necessary. Any mortgage loan originator or mortgage loan processor who is an employee of the following shall be subject to KRS 286.8-255 and 286.8-260.]~~
- (a) A mortgage loan company or mortgage loan broker approved and regulated by the United States Department of Housing and Urban Development to perform business in this Commonwealth; and
- (b) Any branch of a mortgage loan company or mortgage loan broker listed in paragraph (a) of this subsection, provided the branch is approved and regulated by the United States Department of Housing and Urban Development to perform business in this Commonwealth.

- (3) Any nonprofit organization, mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (1)(h) or (2)(a) or (b) of this section shall file with the executive director a written application for a claim of exemption. The executive director shall approve an application for an exemption that is timely filed and meets the requirements of this subtitle. The period of exemption shall be from January 1 through December 31, and the exemption shall expire on December 31 of the same calendar year. Every person granted an exemption under this section shall file a written application for a new exemption on an annual basis. The application shall be received by the executive director on or before December 31 of the same calendar year. A written application for a partial-year exemption shall also expire on December 31 of the same calendar year that the written application for an exemption is granted.
- (4) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (2)(a) or (b) of this section shall fund or broker a minimum of twelve (12) Federal Housing Administration-insured loans on Kentucky residential real properties each year in order to maintain its exemption.
- (5) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (2)(a) or (b) of this section who ceases to be approved or regulated by the Department of Housing and Urban Development shall notify the executive director, in writing, within ten (10) days after it ceases to be regulated by the United States Department of Housing and Urban Development.
- (6) Any person listed in subsection (1)(a), (b), (c), (d), (e), (f), or (g) of this section shall not be required to file with the executive director a claim of exemption.
- (7) (a) Any natural person making a loan under subsection (10) of this section shall make the following disclosure, on a separate sheet of paper in minimum eighteen (18) point type, to the borrower:

#### DISCLOSURE

(Name and address of lender) is not licensed or regulated by the Kentucky Office of Financial Institutions.

(Name of lender) is making this mortgage loan with his or her own funds, for the person's own investment, without intent to resell the mortgage loan.

(The phone number and address of the Kentucky Office of Financial Institutions.)

- (b) A copy of the disclosure, signed by the borrower, shall be maintained by the natural person for a period not to exceed three (3) years after the date the mortgage loan is paid in full.
- (8) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (2)(a) or (b) of this section shall provide a list of funded or brokered Federal Housing Administration-insured loans ***from December 1 of the previous calendar year to November 30 of the current***~~for the previous~~ calendar year to the executive director by December 31 of each year on a form prescribed by the executive director.
- (9) Any mortgage loan company, mortgage loan broker, or branch thereof applying for an exemption under subsection (2)(a) or (b) of this section shall not be approved for an exemption under subsection (2)(a) or (b) of this section unless the mortgage loan company, mortgage loan broker, or branch thereof has:
  - (a) Held a mortgage loan company or mortgage loan broker license or registration for five (5) consecutive years prior to the filing of the application for an exemption under this section with the executive director; or
  - (b) Been approved and regulated by the United States Housing and Urban Development to conduct business in the mortgage lending process for five (5) consecutive years prior to the filing of the application for an exemption under this section with the executive director.
- (10) Any natural person ***not exempted in subsection (1)(b) or (1)(c) of this section who makes***~~making~~ a mortgage loan with his or her own funds for the person's investment without the intent to resell the mortgage loan shall be exempt from the provisions of this subtitle except for the following:
  - (a) Examination provisions of KRS 286.8-170 and 286.8-180 when it appears on grounds satisfactory to the executive director that an examination is necessary;

- (b) Disclosure requirements of subsection (7) of this section;
  - (c) Any investigation and enforcement provisions of this subtitle including KRS 286.8-170(6), and KRS 286.8-046, 286.8-090, 286.8-190, and 286.8-990;
  - (d) Prohibited acts under KRS 286.8-125 and 286.8-220; and
  - (e) **Registration and regulatory requirements of** ~~Any mortgage loan originator or mortgage loan processor who is an employee of a natural person exempted under this subsection shall be subject to~~ KRS 286.8-255 ~~and 286.8-260~~.
- (11) No person shall hold both a claim of exemption and a license granted under this subtitle.
- (12) *Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan company and mortgage loan broker shall make available and grant access to the executive director or an examiner of the executive director the records in its possession or control that are subject to the provisions of this subtitle.*
- (13) *Notwithstanding any provisions to the contrary set forth in this subtitle, no mortgage loan company or mortgage loan broker shall impede the executive director or an examiner of the executive director from interviewing any person regarding any potential violations of this subtitle.*
- (14) *Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan company and mortgage loan broker that employs or utilizes the direct services of a mortgage loan originator subject to the registration and regulatory requirements of Section 18 of this Act shall complete and timely submit to the Nationwide Mortgage Licensing System and Registry an annual report of condition, which shall be in such form and contain such information as the Nationwide Mortgage Licensing System and Registry may require, along with any other information which may be required by the executive director.*

➔SECTION 3. A NEW SECTION OF SUBTITLE 8 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *The following mortgage loan originators shall be subject to subsections (3) and (4) of this section, but shall be exempt from the registration and regulatory requirements of Section 18 of this Act:*
- (a) *An individual employed by the following institutions and acting on behalf of such institutions;*
    - 1. *A depository institution;*
    - 2. *A subsidiary that is:*
      - a. *Owned and controlled by a depository institution; and*
      - b. *Regulated by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, or the Federal Deposit Insurance Corporation; or*
    - 3. *An institution regulated by the Farm Credit Administration;*
  - (b) *A licensed attorney who negotiates the terms of a mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;*
  - (c) *A natural person who originates a mortgage loan on behalf of an immediate family member of the natural person unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator; and*
  - (d) *A natural person who originates a mortgage loan secured by a dwelling that served as the natural person's residence unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator.*
- (2) *The following mortgage loan processors shall be subject to subsections (3) and (4) of this section, but shall be exempt from the registration and regulatory requirements of Section 18 of this Act:*
- (a) *Any natural person exempted in subsection (1) of this section; and*

(b) *Any natural person employed by a person exempted in subsections (1)(a),(b),(c),(d),(e), (f) or (g) of Section 2 of this Act and acting on behalf of such person.*

- (3) *Notwithstanding any provisions to the contrary set forth in this subtitle, no mortgage loan originator or mortgage loan processor shall impede the executive director or an examiner of the executive director from interviewing any person regarding any potential violations of this subtitle.*
- (4) *Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan originator and mortgage loan processor shall make available and grant access to the executive director or an examiner of the executive director the records in the originator's or processor's possession or control that are subject to the provisions of this subtitle.*

➔Section 4. KRS 286.8-030 is amended to read as follows:

- (1) (a) It is unlawful for any person to transact business in **Kentucky**~~[this state]~~, either directly or indirectly, as a mortgage loan company or mortgage loan broker if **the mortgage loan company or mortgage loan broker**~~[he]~~ is not licensed **in accordance with the requirements of**~~[under]~~ this subtitle, unless that person is exempt under KRS 286.8-020 and, if required by KRS 286.8-020(3) has timely filed a completed application for a claim of exemption, and the filed application for a claim of exemption has been approved by the executive director.
- (b) It is unlawful for any natural person to make a loan under KRS 286.8-020(10) without making the disclosure required by KRS 286.8-020(7).
- (c) It is unlawful for any **natural person to transact business in Kentucky, either directly or indirectly, as a** mortgage loan originator or mortgage loan processor, unless otherwise exempted,~~[to originate mortgage loans or otherwise participate in the mortgage lending process in Kentucky]~~ if the mortgage loan originator or mortgage loan processor is not registered in accordance with KRS 286.8-255.
- (d) It is unlawful for any mortgage loan company or mortgage loan broker to employ or use~~[with or without compensation,]~~ a mortgage loan originator or a mortgage loan processor if the mortgage loan originator or mortgage loan processor is not registered in accordance with KRS 286.8-255 **or otherwise exempted.**
- (e) **It is unlawful for any mortgage loan company to employ or use, with or without compensation, a mortgage loan broker if the mortgage loan broker is not licensed in accordance with the requirements of this subtitle unless that person is exempt under Section 2 of this Act and, if required by subsection (3) of Section 2 of this Act has timely filed a completed application for a claim of exemption, and the filed application for a claim of exemption has been approved by the executive director.**
- (2) Neither the fact that a license or certificate of registration has been issued nor the fact that any person, business, or company is effectively registered or licensed, constitutes a finding by the executive director that any document filed under this subtitle is true, complete, and not misleading. Nor does such fact directly or indirectly imply approval of the registrant or licensee by the executive director or the Commonwealth of Kentucky. It is unlawful to make or cause to be made to any prospective customer or client any representation inconsistent with this subsection.
- (3) Any **mortgage loan company or mortgage loan broker**~~[person]~~ who willfully transacts business in **Kentucky**~~[this state]~~ in violation of subsection (1) of this section shall have no right to collect, receive, or retain any interest or charges whatsoever on a loan contract, but the unpaid principal of the loan shall be paid in full.
- (4) **Each solicited, attempted, or closed loan shall constitute a separate violation of this section.**
- (5) **The unique identifier, name, and signature of any person originating a mortgage loan shall be clearly shown on the mortgage loan application. It shall be unlawful to make or cause to be made any representations on a mortgage loan application that are inconsistent with this subsection. The unique identifier shall also be displayed on solicitations or advertisements, including business cards or websites, of all persons holding themselves out as being able to originate mortgage loans in Kentucky, and any other document as established by rule, regulation, or order of the executive director.**

➔Section 5. KRS 286.8-032 is amended to read as follows:

- (1) A license as a mortgage loan company or a mortgage loan broker may be obtained by filing a written application with the executive director. The executive director may require the electronic filing of the application and fees with the State Regulatory Registry, LLC, or its successor organization; its parent, affiliate, or operating subsidiary; or other agencies or authorities, as part of the nationwide mortgage licensing system, and consistent with the intent found in KRS 286.8-285.
- (2) The application shall:
  - (a) Be sworn to;
  - (b) State the name of the applicant and each of the applicant's affiliates and operating subsidiaries engaged in business as a mortgage loan company or a mortgage loan broker;
  - (c) State the name under which the applicant will conduct business in Kentucky;
  - (d) State the physical address of the applicant's principal office and branch or branches;
  - (e) List the name, residence, and business address of each person having an interest in the business as principal, partner, officer, trustee, and director, specifying the capacity and title of each;
  - (f) Indicate the general plan and character of the business;
  - (g) Contain a corporate surety bond or other instrument as prescribed by KRS 286.8-060;
  - (h) If applying for a mortgage loan broker license, contain a compiled financial statement of the applicant; or, if applying for a mortgage loan company license, contain a reviewed or audited financial statement of the applicant prepared by a licensed or certified public accountant;
  - (i) Include payment of the required fees; and
  - (j) Include such other information as the executive director determines necessary.
- (3) No mortgage loan company license may be granted unless the applicant:
  - (a) Has and maintains, so long as the license is in effect, a minimum, documented funding source of one million dollars (\$1,000,000);
  - (b) ~~Has a net worth in excess of one million dollars (\$1,000,000); or~~
  - (c) ***Has and maintains a net worth in excess of one hundred thousand dollars (\$100,000) and certifies to the executive director that the company will not make or purchase loans secured by mortgages on residential real property located in Kentucky so long as the license is in effect***~~[an additional funding source is not required].~~
- (4) A license issued to a mortgage loan company or a mortgage loan broker shall entitle all officers and employees of the person, if a corporation, and all members, partners, trustees, and employees, if an association, partnership, natural person, or trust, to engage in the mortgage loan business pursuant to this subtitle, subject to the applicable requirements of this subtitle.
- (5) If a licensee desires to establish a branch, the licensee shall file an application with the executive director that includes the physical location and telephone number of the branch, the name of the prospective manager, the anticipated opening date, and any other information requested by the executive director.
- (6) Each applicant for a mortgage loan broker license shall have at least one (1) ***managing principal at all times. This managing principal***~~[owner who owns at least twenty percent (20%) of the applicant and]~~ shall provide the executive director sufficient proof of a minimum of two (2) years' experience working in the mortgage industry. The executive director shall determine from the application whether an applicant has sufficient experience to meet this requirement. ***Each mortgage loan broker shall obtain written approval from the executive director prior to a change of managing principal.***
- (7) All applicants for a mortgage loan broker license shall have successfully completed an educational training course, approved by the office, of not less than thirty (30) classroom hours' duration. ***Applicants***~~[Mortgage loan brokers]~~ who have held a ***mortgage loan broker*** license for at least one (1) year ***in the past five (5) years*** shall be exempt from this requirement~~[if the applicant has held a mortgage broker license five (5) consecutive years prior to the filing of the application with the executive director]~~. This section shall not apply to renewals of existing licenses. Approval of an applicant for a mortgage loan broker license under this subsection shall be conditioned on the applicant establishing that the district, state, or territory from which the applicant applies,

resides, or performs the primary portion of his or her mortgage business has rules, regulations, or other provisions which by reciprocity or comity are at least equivalent to this subsection.

- (8) The application for a mortgage loan broker and mortgage loan company license shall state:
- (a) The address of the physical location where the business is to be located in compliance with KRS 286.8-250 and whether such location is a residence. ***The physical location where the mortgage lending process is conducted shall have a street address. A post office box or similar designation shall not meet the requirements of this subsection. The physical location shall be accessible to the general public as a place of business, unless the physical location is a residence and proof of residence has been submitted as required by this section.*** Photographs of the exterior, interior, and exterior sign of each location shall accompany the application. If the physical location is not a residence and is leased, the lease shall be for a minimum term of one (1) year. A copy of the lease and the names of all employees conducting business under the lease shall accompany the application. If the physical location is a residence, proof that the location is a residence, in a form as required by the executive director, shall accompany the application. Proof of residence shall confirm that the ***residence is owned or leased by the mortgage loan broker, mortgage loan company, or its employees or owners*** ~~owns or leases the residence~~ ~~and that the residence is the~~ ~~lives in the residence as the mortgage loan broker's~~ main residence ***of any such persons.*** Proof of physical location shall include proof that local zoning requirements are satisfied.
  - (b) A mortgage loan company or mortgage loan broker shall notify the executive director of a change in the location or name of its business or the addition of any branch or branches in writing at least ten (10) days prior to the change.
- (9) On or after January 1, 2009, every mortgage loan company and mortgage loan broker shall maintain an agent for service of process in the Commonwealth. The name, address, telephone number, and electronic mail address of the agent for service of process shall be filed with the application. The executive director shall be notified in writing at least five (5) days prior to any change in the status of an agent for service of process.
- (10) The executive director may deem an application abandoned when an applicant fails to provide or respond to a request for additional information.

➔Section 6. KRS 286.8-034 is amended to read as follows:

- (1) An applicant for a license under this subtitle shall provide the executive director with separate checks payable to the Kentucky State Treasurer for:
  - (a) An investigation fee of three hundred dollars (\$300) for the principal office and one hundred fifty dollars (\$150) for each branch office; and
  - (b) A license fee of four hundred fifty dollars (\$450) for the principal office and two hundred fifty dollars (\$250) for each branch originating mortgages on residential real properties located in Kentucky if the applicant applies for a license on or between November 1 and June 30 of the following calendar year or of one hundred fifty dollars (\$150) for the principal office and one hundred dollars (\$100) for each branch if the applicant applies for a license on or between July 1 and October 31 of the same calendar year.
- (2) A license issued between January 1 and October 31 of the same calendar year shall expire on December 31 of the same calendar year. A license issued between November 1 and December 31 of the same calendar year shall expire on December 31 of the following calendar year.
- (3) A license may be renewed by paying the annual renewal license fee which is three hundred fifty dollars (\$350) for the principal office and two hundred fifty dollars (\$250) for each branch originating mortgages on residential real properties located in Kentucky, ~~and~~ ***submitting to the Nationwide Mortgage Licensing System and Registry an annual report of condition, which shall be in such form and contain such information as the Nationwide Mortgage Licensing System and Registry may require,*** ~~an annual report of activity as prescribed by the executive director~~ ***and submitting to the executive director any other information*** required by the executive director. The executive director shall not approve the renewal of a mortgage loan broker's license if the executive director has not received the information on physical location as required in KRS 286.8-032(8).

- (4) The application, fees, and any required information shall be received by the executive director on or before November 30 prior to the December 31 expiration date. The executive director may reinstate the license within thirty-one (31) days of the expiration of the license if the licensee pays the filing fee and a reinstatement fee of two hundred fifty dollars (\$250). A license shall not be reinstated when the application, fees, or any required information is received on or after February 1 of the following year that the renewal application was due.
- (5) The executive director shall provide a licensee with a duplicate copy of any license upon a satisfactory showing of its loss and payment of a ten dollar (\$10) replacement fee.

➔Section 7. KRS 286.8-044 is amended to read as follows:

- (1) ***Notice of entry of any order of suspension or denial of a license, registration, or claim of exemption to any applicant, registrant, or licensee shall be given in writing and served personally or sent by certified mail to the last known address of the person affected. The affected person, upon timely written request to the executive director, shall be entitled to a hearing in accordance with the provisions of KRS Chapter 13B; but if no written request is received within twenty (20) days of service of the notice, the executive director shall enter a final order suspending or denying the license or registration.***
- (2) The executive director may file an administrative complaint against any person if it appears on grounds satisfactory to the executive director that a potential or actual violation of this subtitle has been committed and when the person may be subject to the penalties of KRS 286.8-046, 286.8-090, and 286.8-990. The executive director shall serve the administrative complaint by certified mail or personal delivery to the last known address of the person named in the complaint. The person named in the administrative complaint shall be entitled to a hearing, but only upon timely receipt of a written answer and request for a hearing within twenty (20) days of the ~~service~~~~mailing~~ or hand delivery of the administrative complaint. If timely requested, an administrative hearing shall be held in accordance with the provisions of KRS Chapter 13B ~~and 808 KAR 12:030~~. ***If a written answer and request for hearing are not made within twenty (20) days of service or delivery of the complaint, the executive director shall enter a final order granting the relief requested in the complaint.***
- (3) ***Service by certified mail shall be complete upon the earlier of the following:***
  - (a) ***The date on which the person receives the mail;***
  - (b) ***The date on which the agency receives the return receipt; or***
  - (c) ***The date on which the agency receives notice that the mail has been returned undelivered.***

➔Section 8. KRS 286.8-046 is amended to read as follows:

- (1) The executive director may levy a civil penalty against any person who violates any provision of or any administrative regulation promulgated under this subtitle or order issued by the executive director under this subtitle. The civil penalty shall be not less than one thousand dollars (\$1,000) nor more than twenty-five thousand dollars (\$25,000) per violation, plus the state's costs and expenses for the examination, investigation, and prosecution of the matter, including reasonable attorney's fees and court costs.
- (2) ***The executive director may order restitution, refund, recovery of expenses, or direct such other affirmative action as the executive director deems necessary against any person who violates any order issued by the executive director or any provision of, or administrative regulation promulgated under, this subtitle.***

➔Section 9. KRS 286.8-060 is amended to read as follows:

- (1) Except as otherwise provided in this section, ~~each~~~~at the time of filing an application or renewal for registration as a~~ mortgage loan company, ~~or~~ mortgage loan broker, ***and mortgage loan originator*** ~~the applicant~~ shall post ***or be covered by a surety bond for the entire licensure or registration period*** ~~corporate surety bonds~~ in an amount ***prescribed by the executive director, but in no event shall the bond be*** ~~not~~ less than two hundred fifty thousand dollars (\$250,000) for mortgage loan companies and ~~not less than~~ fifty thousand dollars (\$50,000) for mortgage loan brokers.
- (2) Every bond shall provide for suit thereon by any person who has a cause of action under this subtitle. The total liability of the surety, to all persons, cumulative or otherwise, shall not exceed the amount specified in the bond.

- (3) The bond shall be *in a form prescribed by the executive director and shall be* made payable to the executive director ~~of the Office of Financial Institutions~~. *The terms of the bond shall provide that it may not be terminated without thirty (30) days prior written notice to the executive director.*
- (4) Every bond shall be available for the recovery of expenses, fines, *restitution*, and fees levied by the executive director under this subtitle, and for losses or damages that ~~are determined by the executive director to~~ have been incurred by any borrower or consumer as a result of the *registrant's* ~~applicant's~~ or licensee's failure to comply with the requirements of this subtitle.
- (5) Every bond shall provide that no suit shall be maintained to enforce any liability on the bond unless brought within three (3) years after the act upon which it is based.
- ~~(6) In lieu of posting corporate surety bonds, the applicant may:~~
- ~~(a) Deposit with the executive director an irrevocable letter of credit for an amount equal to the required bond upon which the applicant is the obligor, issued by a bank approved by the executive director, whose deposits are insured by the Federal Deposit Insurance Corporation;~~
  - ~~(b) Establish an account payable to the executive director in a federally insured financial institution in this state and deposit money of the United States in an amount equal to the amount of the required bond; or~~
  - ~~(c) Deposit with the executive director an escrow agreement for a savings certificate of a federally insured financial institution in this state for an amount payable which is equal to the amount of the required bond and which is not available for withdrawal except by direct order of the executive director. Interest earned on the certificate accrues to the applicant.~~
- ~~(7) If the executive director or the executive director's representative shall at any time reasonably determine that the bond or securities aforesaid are insecure, deficient in amount, or exhausted in whole or part, he may by written order require the filing of a new or supplemental bond or the deposit of new or additional securities in order to secure compliance with this subtitle, the order to be complied with within thirty (30) days following service thereof upon the registrant *or licensee*.~~

➔Section 10. KRS 286.8-100 is amended to read as follows:

- (1) No licensee shall establish or maintain a branch *transacting business* in Kentucky, *either directly or indirectly*, without filing the application as described in KRS 286.8-032(5) and receiving prior written approval of the executive director.
- (2) Each application for approval of the establishment and maintenance of a branch shall state the physical address of the proposed location, the functions to be performed, and other information the executive director may require if different from that contained in the original application for a license or registration.
- (3) Each application under this section shall be sworn to and accompanied by the appropriate fee as set out in KRS 286.8-034(1)(b).
- (4) Upon the receipt by the executive director of an application and the required fee, if he finds that the applicant is otherwise in compliance with the provisions of this subtitle, he shall approve the application.
- (5) The executive director may deem an application abandoned and subject to KRS 286.8-090 when the application is received incomplete and the applicant fails to provide any required information or fee under this subtitle or fails to respond to a request by the executive director for further information.

➔Section 11. KRS 286.8-150 is amended to read as follows:

- (1) Except as otherwise provided by law, applications for registration or renewals, all papers, documents, reports, and other written instruments filed with the executive director under this subtitle, or obtained pursuant to an examination by the Office of Financial Institutions are open to public inspection, except that the executive director pursuant to the provisions of KRS Chapter 61 may classify as confidential or withhold from public inspection for such time as he considers necessary any information which, in his judgment, the public welfare or the welfare of any *licensee or registrant* ~~mortgage loan company~~ or its customers requires to be so withheld. All investigations and information contained therein shall not be public until such time as the executive director makes all or part of the investigation public or the investigation is closed.

- (2) The executive director ~~may~~ ~~[shall have the authority to]~~ classify as confidential certain records and information obtained by the Office of Financial Institutions when such matters are obtained from *the Nationwide Mortgage Licensing System and Registry* or from a governmental agency ~~[upon the express condition that they shall remain confidential].~~
- (3) *The executive director may classify as confidential and prohibit the disclosure of any request for documents or records submitted pursuant to KRS 286.8-180, for such time as deemed necessary if, in the executive director's judgment, the disclosure of said request for documents or records may impede or interfere with an ongoing investigation conducted pursuant to KRS 286.8-140 or may cause the destruction or secretion of documents by the targeted party.*
- (4) *Notwithstanding any provision to the contrary in this subtitle or in KRS Chapter 61, any information, documents, or material provided to or obtained from the Nationwide Mortgage Licensing System and Registry shall be subject to the confidentiality requirements set forth in Section 1512 of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto.*

➔Section 12. KRS 286.8-170 is amended to read as follows:

- (1) Every mortgage loan company and mortgage loan broker shall keep at its principal office correct and complete *records of its business transactions*, books of accounts, and minutes of proceedings of its directors, principals, or partners. Complete records of all business transactions at the principal office shall be maintained at the principal office. Each branch office shall keep detailed records of all transactions at such branch office and shall furnish full control records to the principal office.
- (2) No mortgage loan company or mortgage loan broker by any system of accounting or any device of bookkeeping shall, either directly or indirectly, enter any of its assets upon its books in the name of any person, partnership, association, or corporation, or under any title, designation, or value that is not thoroughly descriptive of any assets.
- (3) The affairs of every mortgage loan company, ~~[and]~~ mortgage loan broker, *mortgage loan originator, and mortgage loan processor*, and the records required to be maintained by KRS 286.8-160 are subject at any time or from time to time to such periodic, special, or other examinations by the executive director or an examiner of the executive director within or without this state and with or without notice to the *person being examined* ~~[mortgage loan company and mortgage loan broker]~~, as the executive director deems necessary or appropriate in the public interest. All *records* ~~[books, papers, and records of assets]~~ of the *person being examined* ~~[mortgage loan company]~~ shall be subject to *the executive director's* ~~[his]~~ inspection.
- (4) The examiner shall make a thorough examination into the condition, workings and affairs of the *person being examined* ~~[association]~~ and report any violation of law or any unauthorized unsafe practices or any failure to keep and have correct any required books and records as he may find to the executive director.
- (5) A mortgage loan company or mortgage loan broker shall pay a fee for each such examination *of its operations or employees* based on fair compensation for time and actual expense. For the purpose of avoiding unnecessary duplication of examinations, the executive director, insofar as he deems it practicable in administering this section, may cooperate *and exchange information* with any agency of the state or federal government, other states, *the Nationwide Mortgage Licensing System and Registry*, or the federal National Mortgage Association, Government National Mortgage Association, and Federal Home Loan Mortgage Corporation, and may accept such examinations in whole or in part in lieu of an examination by the executive director.
- (6) The executive director or his examiners or designated representative shall have access to all *records* ~~[books and papers]~~ of a mortgage loan company, ~~[and]~~ mortgage loan broker, *mortgage loan originator, and mortgage loan processor* which relate to their business, and *records* ~~[books and papers]~~ kept by any officers, agents, or employees, relating to or upon which any record of its business is kept.
- (7) *A mortgage loan originator or mortgage loan processor shall make available and grant access to the executive director, or an examiner of the executive director, the records relating to its operations. A mortgage loan company or mortgage loan broker shall make available and grant access to all records of its current and former employees and contractors relating to its operations.*
- (8) *Any person subject to this subtitle shall make or compile reports or prepare other information as directed by the executive director or an examiner of the executive director to include:*
- (a) *Accounting compilations;*

- (b) *Information lists and data concerning loan transactions in a format prescribed by the executive director or an examiner of the executive director; and*
- (c) *Such other information deemed necessary to carry out the purposes of this section.*
- (9) *No mortgage loan company, mortgage loan broker, mortgage loan originator, or mortgage loan processor shall impede the executive director or an examiner of the executive director from interviewing its officers, principals, members, employees, independent contractors, agents, or customers.*
- (10) *In making any examination or investigation authorized by this subtitle, the executive director may control access to any documents and records of the licensee or person under examination or investigation. The executive director may take possession of the documents and records, or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the executive director. Unless the executive director has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this subtitle, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.*
- (11) *It shall be unlawful for any person subject to investigation or examination under this subtitle to knowingly withhold, abstract, alter, remove, mutilate, destroy, or secrete any books, records, or other information.*
- (12) *In order to carry out the purposes of this subtitle, the executive director may:*
  - (a) *Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;*
  - (b) *Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this subtitle; and*
  - (c) *Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the persons subject to this subtitle.*
- (13) *The authority of this section shall remain in effect, whether a person acts or claims to act under any licensing or registration law of this subtitle, or claims to act without such authority.*

➔Section 13. KRS 286.8-190 is amended to read as follows:

- (1) The executive director may investigate either upon complaint or otherwise when it appears that any person is conducting business in an unsafe and injurious manner or otherwise is in violation of this subtitle, or any rule or order hereunder, or when it appears that any person is engaging in the mortgage loan business without being licensed or registered, or legally exempted from licensing or registration, under the provisions of this subtitle.
- (2) If it appears to the executive director upon sufficient grounds or evidence satisfactory to the executive director that any ~~person~~~~[mortgage loan company or mortgage loan broker]~~ has engaged in or is about to engage in any practice in violation of this subtitle or any rule or order hereunder, or that ~~person's mortgage loan business~~~~[the mortgage loan company's or mortgage loan broker's]~~ affairs are in an unsafe condition, the executive director may:
  - (a) Order the person to cease and desist from the acts or practices by a formal written order delivered to the person stating any alleged violation. The order shall specify the effective date thereof, and notice of entry shall be served personally or sent by certified mail to the last known address of the person affected. The person, upon written application, shall be entitled to a hearing; but if a written application for a hearing is not timely received by the executive director within twenty (20) days after the certified mailing or personal delivery of the order, it shall be made final and shall remain in effect until withdrawn by the executive director or terminated by a court order; and
  - (b) Apply directly to Franklin Circuit Court, or any court of competent jurisdiction, to enjoin any acts or practices in violation of this subtitle and to enforce compliance with this subtitle or any rule or order hereunder. Upon proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The executive director shall not be required to post a bond.

➔Section 14. KRS 286.8-220 is amended to read as follows:

- (1) It shall be unlawful for any person to make or cause to be made, in any document filed with the executive director, *a governmental agency, the Nationwide Mortgage Licensing System and Registry*, or in any proceeding under this subtitle, any statement that is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect, including an omission of a material fact.
- (2) It shall be unlawful for any person, in connection with a transaction involving the mortgage lending process, or in connection with the operation of a mortgage loan business or the management or servicing of mortgage ~~loans~~~~contracts~~, directly or indirectly:
  - (a) To employ a device, scheme, or artifice to defraud;
  - (b) To engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;
  - (c) To fail to disburse funds in accordance with a loan commitment;
  - (d) To delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;
  - (e) Upon receipt of a customer's written request, to delay beyond five (5) business days the issuance of a written loan payoff amount or to delay beyond ten (10) business days the issuance of a payment history; ~~or~~
  - (f) To charge a fee for the issuance of an initial written loan payoff amount or payment history for each calendar quarter as set out in paragraph (e) of this subsection;
  - (g) *To obtain property by fraud or misrepresentation;*
  - (h) *To fail to make disclosures as required by this subtitle or any other applicable state or federal law including regulations thereunder; or*
  - (i) *To fail to comply with state or federal laws, including the rules and regulations thereunder, that are applicable to transacting business in Kentucky.*
- (3) Unless exempted by KRS 286.8-020(1), it shall be unlawful for any person to transact~~any~~ business~~in the mortgage lending process on residential real property~~ in Kentucky unless it *complies with the provisions of this subtitle*:  
  - ~~(a) — Qualifies to do business in Kentucky as required by KRS Chapter 271B; and~~
  - ~~(b) — Complies with the provisions of this subtitle.~~
- (4) It shall be unlawful for any person to use prescreened trigger lead information derived from a consumer report to solicit a consumer who has applied for a mortgage loan with another mortgage loan company or mortgage loan broker, when the person:
  - (a) Fails to state in the initial solicitation that the person is not affiliated with the mortgage loan company or mortgage loan broker with which the consumer initially applied;
  - (b) Fails in the initial solicitation to conform to state and federal law relating to prescreened solicitations using consumer reports, including the requirement to make a firm offer of credit to the consumer;
  - (c) Uses information regarding consumers who have opted out of the prescreened offers of credit or who have placed their contact information on the state or federal do-not-call registry; or
  - (d) Solicits a consumer with an offer of certain rates, terms, and costs with the knowledge that the rates, terms, or costs will be subsequently changed to the detriment of the consumer.

➔Section 15. KRS 286.8-225 is amended to read as follows:

*There is hereby created in the State Treasury a trust and revolving fund designated as the "Mortgage Fraud Prosecution Fund."* ~~The mortgage lending fraud prosecution account is created in the custody of the State Treasurer.~~ All civil penalties *or contributions* directed by the executive director to be transmitted to the mortgage ~~lending~~ fraud prosecution ~~fund~~~~account~~ shall be deposited into the ~~fund~~~~account~~. Expenditures from the ~~fund~~~~account~~ may be used~~only~~ for *the investigation and* criminal prosecution of fraudulent activities within the residential mortgage lending process, *training related to prevention, detection, and investigation of mortgage fraud,*

*and consumer education related to mortgage fraud.* Only the executive director of the Office of Financial Institutions or the executive director's designee may authorize expenditures from the account. *The money deposited in the fund is hereby appropriated for the uses set forth in this section. Notwithstanding KRS 45.229, any money remaining in the fund at the close of any fiscal year shall not lapse but shall be carried forward to the next fiscal year. The fund may also receive additional state appropriations, gifts, grants, contributions, and federal funds. All interest earned on money in the fund shall be credited to the fund.*

➔Section 16. KRS 286.8-227 is amended to read as follows:

The executive director is authorized through the collection of civil penalties *or contributions*~~[from any violation of this subtitle]~~ to retain the funds collected for the purpose of depositing the funds into the mortgage lending fraud prosecution *fund*~~[account]~~ created in KRS 286.8-225. The funds shall be transmitted monthly to the State Treasurer, who shall deposit the funds into the mortgage lending fraud prosecution *fund*~~[account]~~ created in KRS 286.8-225. The executive director of the Office of Financial Institutions is responsible for the distribution of the funds in the account and shall, in consultation with the Attorney General and local prosecutors, develop administrative regulations for the use of these funds~~[to pursue criminal prosecution of fraudulent activities within the residential mortgage lending process].~~

➔Section 17. KRS 286.8-240 is amended to read as follows:

KRS 286.8-010 to ~~286.8-285~~~~[286.8-230]~~ shall be known and may be cited as the "Mortgage *Licensing and Regulation*~~[Loan Company and Mortgage Loan Broker]~~ Act."

➔Section 18. KRS 286.8-255 is amended to read as follows:

- (1) No *natural person*~~[mortgage loan originator or mortgage loan processor]~~ shall *transact business*~~[originate or process mortgage loans on residential real property]~~ in Kentucky, *either directly or indirectly, as a mortgage loan originator or mortgage loan processor* unless such mortgage loan originator or mortgage loan processor is registered with the office and has been issued a *current* certificate of registration by the office, *complies with all applicable requirements of this subtitle, and maintains a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.* The office shall maintain a database of all mortgage loan originators and mortgage loan processors originating or processing mortgage loans on residential real property in Kentucky. The office shall issue a certificate of registration to all registered mortgage loan originators and mortgage loan processors.
- (2) The *application for* registration shall:
  - (a) Be on a form prescribed by the executive director;
  - (b) Be accompanied by a registration fee in the amount of fifty dollars (\$50) which shall be used solely by the office to establish and maintain a database of all mortgage loan originators and mortgage loan processors, and any excess funds shall be retained by the office and shall not lapse to the general fund; *and*
  - (c) *Contain such information as the executive director deems necessary to carry out the purposes of this subtitle.*
- (3)
  - (a) Applications for initial registrations of mortgage loan originators and mortgage loan processors shall be accompanied by satisfactory evidence that the applicant has successfully completed *twenty (20)*~~[twelve (12) classroom]~~ hours of *pre-licensing* education courses related directly to the mortgage lending process, as approved *and designated* by the executive director.~~[This subsection shall not apply to renewals of existing certificates of registration.]~~
  - (b) *For the purposes of subsection (3)(a) of this section, the pre-licensing education courses approved and designated by the executive director shall meet the minimum requirements set forth in Section 1505(c) of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto, and shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.*
  - (c) *For the purposes of subsection (3)(a) of this section, the executive director may accept as credit towards the completion of the pre-licensing education requirements in this state, the completion of pre-licensing education requirements in any other state so long as the education has met the requirements set forth in subsections (3)(a) and (b) of this section.*

- (4) Applications for renewals of certificates of registration by registered mortgage loan originators and mortgage loan processors shall be accompanied by satisfactory evidence that the individual has successfully met the continuing education requirements of KRS 286.8-260 and by payment of a renewal fee in the amount of fifty dollars (\$50). The renewal fee shall be used solely by the office to establish and maintain a database of all mortgage loan originators and mortgage loan processors and any excess funds shall be retained by the office and shall not lapse to the general fund.
- ~~(5) The executive director may issue for good cause a temporary certificate of registration for a period not to exceed one hundred eighty (180) days to a mortgage loan originator or mortgage loan processor who is awaiting the completion of a criminal records background check pursuant to this subtitle. The temporary certificate of registration shall expire automatically by operation of law in one hundred eighty (180) days from the date of issuance if the application is not completed. No more than one (1) temporary certificate of registration shall be issued within an eighteen (18) month period.~~
- ~~(6)~~ A certificate of registration issued between January 1 and October 31 of the same calendar year shall expire on December 31 of the same calendar year. A certificate of registration issued between November 1 and December 31 of the same calendar year shall expire on December 31 of the following calendar year. Any certificate of registration that has expired may be reinstated by the executive director upon payment of the annual registration fee, and a reinstatement fee of two hundred fifty dollars (\$250), within thirty (30) days of the expiration of the certificate of registration.
- ~~(6)~~~~(7)~~ The office shall provide a registrant with a duplicate copy of any certificate of registration upon satisfactory showing of its loss and payment of a ten dollar (\$10) replacement fee.
- ~~(7)~~~~(8)~~ All mortgage loan originators and mortgage loan processors subject to the registration requirements of this section shall also be subject to *and comply with* all applicable provisions of this subtitle.
- ~~(8)~~~~(9)~~ The executive director may require the submission of ~~a federal and state criminal~~ background records *checks, including but not limited to checks for state, federal, and international criminal histories, civil or administrative records, and any other information as deemed necessary to comply with the minimum requirements set forth in Section 1505 of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto, as well as the submission of an independent credit report obtained from a consumer reporting agency described in the Fair Credit Reporting Act, 15 U.S.C. sec. 1681a,~~check~~ as part of an application or renewal application filed under this subtitle. The cost of the background *and records checks, and credit report*~~check~~ shall be borne by the applicant.*
- (9) *No mortgage loan originator or mortgage loan processor shall be granted or shall be entitled to maintain a certificate of registration unless he or she satisfies the following minimum standards for registration:*
- (a) *The applicant has never had a loan originator's license or registration revoked in any governmental jurisdiction, except revocations that have been formally vacated or set aside shall not be deemed a revocation for the purposes of this section;*
  - (b) *The applicant has not been convicted of, pled guilty to, or pled nolo contendere to a felony in any domestic, foreign, or military court:*
    1. *During the seven (7) year period preceding the date of the application for registration or renewal of registration; or*
    2. *At any time preceding such date of application for registration or renewal of registration, if such felony involved an act of fraud or dishonesty, a breach of trust, or money laundering;*
  - (c) *The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator or loan processor will operate honestly, fairly, lawfully, and efficiently within the purposes of the subtitle;*
  - (d) *The applicant has completed the pre-licensing education requirement set forth in subsection (3) of this section;*
  - (e) *The applicant has passed a qualified written test which satisfies the minimum requirements set forth in Section 1505(d) of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto; and*

- (f) *If required by Section 9 of this Act, the applicant holds or is covered by a surety bond which satisfies the minimum requirements set forth in Section 9 of this Act.*
- (10) *No mortgage loan originator or mortgage loan processor shall be granted a renewal certificate of registration unless he or she satisfies the following minimum standards for renewal of registration:*
- (a) *The applicant has met and continues to meet the minimum standards set forth in subsection (9) of this section; and*
- (b) *The applicant has satisfied the annual continuing education requirements set forth in Section 19 of this Act.*
- (11) *The certificate of registration of any mortgage loan originator or mortgage loan processor that fails to comply with the minimum standards for registration renewal set forth in this section shall expire and shall promptly be deemed surrendered to the executive director without demand. The executive director may adopt procedures and requirements for the reinstatement of expired registrations consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.*
- (12) *Mortgage loan originators engaging in any of the activities set forth in subsection (21)(a) of Section 1 of this Act shall provide loan origination services to not more than one (1) mortgage loan company or mortgage loan broker at a time.*

➔Section 19. KRS 286.8-260 is amended to read as follows:

- (1) ~~[Beginning July 1, 2004, ]~~Any person required to be registered under this subtitle shall complete at least twelve (12) hours of continuing professional education *on an annual basis that is approved and designated by the executive director. A minimum of four (4) hours of continuing professional education at least once every two (2) years shall be instruction on the requirements of this subtitle or KRS 360.100, or a combination of both*~~[, a minimum of six (6) of which must be classroom hours, by June 30, 2005, and annually thereafter].~~
- (2) *For the purposes of subsection (1) of this section, the continuing professional education courses approved and designated by the executive director shall meet the minimum requirements set forth in Section 1505(b) of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto. The education courses approved and designated by the executive director shall also be reviewed and approved by the Nationwide Mortgage Licensing System and Registry unless the Nationwide Mortgage Licensing System and Registry provides otherwise*~~[Up to twelve (12) hours of continuing professional education may be carried forward from one (1) continuing education year to the next continuing education year. The continuing education year shall begin on November 1 and end on October 31 of the following year].~~
- (3) *For the purposes of subsection (1), the executive director may accept as credit towards the completion of the continuing professional education requirements in this state, the completion of continuing professional education requirements in any other state so long as the education has met the requirements set forth in subsections (1) and (2) of this section*~~[The completion of the educational requirement in the case of initial registrations under KRS 286.8-255(2)(c) shall satisfy the continuing education requirement of this section for the first renewal registration.~~
- ~~(4) Fifty (50) minutes of classroom contact shall equal one (1) hour of continuing professional education. Each continuing professional education course, other than classroom hours, shall equal the number of hours approved and designated by the Office of Financial Institutions for that course. Course sponsors shall maintain records of attendees for two (2) years after completion of the course.~~
- ~~(5) Every person required to be registered under this subtitle shall furnish to the executive director written certification as to each continuing professional education course satisfactorily completed. The certification shall be signed by the teacher or sponsoring organization of the course showing the date the course was completed, the number of hours of the course, and the number of hours attended. The certification shall be on a form prescribed by the executive director.~~
- ~~(6) Beginning July 1, 2009, the executive director shall approve professional education courses to meet the continuing professional education requirement of this subtitle. The executive director may assess a fee of fifty dollars (\$50) for each professional education course that is reviewed for approval. Only courses approved by the executive director shall qualify to satisfy the continuing professional education requirement of this section. Professional education courses shall be reviewed by the executive director on a biennial basis from the date of the approval to determine whether the course continues to satisfy the professional education requirements of~~

~~this section. The executive director may withdraw approval of any education course at any time where it is shown to the satisfaction of the executive director that the education course no longer meets the requirements of this section.~~

- ~~(7) (a) Beginning July 1, 2009, the executive director shall approve education providers who are qualified to teach professional education necessary to meet the continuing professional education requirement of this subtitle. Any education provider approved by the executive director shall not be required to register or seek approval of his or her qualifications with any other state agency. Approved education providers shall meet the standards established in administrative regulation and may include without limitation:~~
- ~~1. Trade associations;~~
  - ~~2. For profit education providers;~~
  - ~~3. Not for profit education providers;~~
  - ~~4. Employers conducting in house training programs; and~~
  - ~~5. Government agencies and government associations.~~
- ~~(b) An individual teaching any approved continuing professional education course shall qualify for the same number of hours of continuing professional education as would be granted to a mortgage loan broker or mortgage loan originator taking and satisfactorily completing the course.~~
- ~~(c) The executive director may withdraw approval of any education provider at any time where it is shown to the satisfaction of the executive director that the education provider no longer qualifies to teach or provide continuing professional education required under this section}.~~

~~(4){(8)}~~ For good cause shown, the executive director may grant an extension during which the continuing education requirement of this section may be completed, but the extension may not exceed thirty (30) days. What constitutes good cause for the extension of time rests within the discretion of the executive director.

~~(5){(9)}~~ The certificate of registration of any mortgage loan originator or mortgage loan processor that fails to comply with the continuing professional education requirements of this section and who has not been granted an extension of time to comply in accordance with subsection ~~(4){(8)}~~ of this section shall expire and shall ~~be~~ promptly *be deemed* surrendered to the executive director without demand.

➔Section 20. KRS 286.8-285 is amended to read as follows:

- (1) (a) In addition to other duties imposed upon the executive director in this subtitle, the executive director shall be authorized to participate in the establishment and implementation of *the Nationwide Mortgage Licensing System and Registry and to implement and comply with the minimum requirements set forth in the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto*~~{a multistate automated licensing system for mortgage loan brokers, mortgage loan companies, loan officers, or originators}~~.
- ~~(b){(a)}~~ For such purpose, the executive director is authorized to waive or modify, in whole or in part, by rule or by order, any or all of the requirements of this subtitle and to establish new requirements as reasonably necessary to carry out the purpose of this section.
- ~~(c){(b)}~~ *The executive director shall have authority to establish relationships or contracts with other governmental agencies, the Nationwide Mortgage Licensing System and Registry, or entities affiliated with the system that are necessary to carry out the purpose of this section*~~{These new requirements shall include the fingerprinting of applicants and the submission of those fingerprints, along with any fee required to perform the criminal background record review, to the Federal Bureau of Investigation and the Department of Kentucky State Police or an equivalent state department law enforcement agency for state and national criminal background record review of the applicant}~~.
- (d) *The executive director may establish interim procedures to promote and establish an orderly and efficient transition for the registration, review, and acceptance of new applications. The executive director may also establish interim procedures and expedited review and registration procedures for previously registered individuals.*
- (e) *The executive director may use the Nationwide Mortgage Licensing System and Registry as an agent for receiving, requesting, and distributing information to and from any source so directed by the executive director.*

- (2) The executive director shall *establish a process whereby licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the executive director* ~~not be authorized under this section to require a person or individual who is exempt under KRS 286.8-020(1)(a) or (g) to submit information or participate in the uniform multistate licensing program~~.
- (3) *The executive director shall annually request audited financial reports, including inquiring as to the budget and fees collected, both proposed and actual, from the Nationwide Mortgage Licensing System and Registry.*
- (4) *The executive director shall annually request any nonconfidential protocols or reports for the security and safeguarding of personal information maintained by the Nationwide Mortgage Licensing System and Registry, including the following:*
- (a) *Inquiring as to whether the system has implemented and complied with the data security guidelines set forth in the Gramm-Leach-Bliley Act, 15 U.S.C. sec. 6801;*
  - (b) *Inquiring as to the results of any nonconfidential periodic data protection audits that the system may conduct; and*
  - (c) *Inquiring as to whether any security breaches have occurred resulting in the substantial likelihood that personal information may be misused or stolen.*
- (5) *The executive director shall annually request from the Nationwide Mortgage Licensing System and Registry the following statistical information, if available, relating to the examinations taken by applicants seeking registration as a loan originator in Kentucky during the preceding calendar year:*
- (a) *The total number of tested individuals, along with any relevant demographic information available such as race, ethnicity, or gender;*
  - (b) *The total number of individuals who received a passing score on the examination, along with any relevant demographic information available such as race, ethnicity, or gender;*
  - (c) *The total number of individuals who did not receive a passing score on the examination, along with any relevant demographic information available such as race, ethnicity, or gender; and*
  - (d) *All mean, average, or scaled scoring data.*
- (6) *When requested by the General Assembly, the executive director shall review and report to the General Assembly the content of any information received from the Nationwide Mortgage Licensing System and Registry pursuant to subsections (3), (4), or (5) of this section.*
- (7) *Notwithstanding any provision to the contrary in this subtitle or in KRS Chapter 61, the executive director shall regularly report violations of this subtitle, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry.*

➔SECTION 21. A NEW SECTION OF SUBTITLE 8 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

*Every mortgage loan company and mortgage loan broker shall exercise proper supervision and control over the operations, employees, and affairs of its company. A mortgage loan company or mortgage loan broker shall not directly utilize the services of a mortgage loan originator engaging in any of the activities set forth in subsection (21)(a) of Section 1 of this Act, unless that mortgage loan originator is under the supervision and control of that company as an employee. Notwithstanding any provision to the contrary, nothing in this section shall prohibit mortgage loan companies from utilizing the services of a mortgage loan broker and its employees.*

➔SECTION 22. A NEW SECTION OF SUBTITLE 8 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

*If any provision of this subtitle or its application to any person or circumstance is held invalid, the remainder of the subtitle and the application of the provision to other persons or circumstances shall not be affected.*

➔Section 23. KRS 286.2-100 is amended to read as follows:

As used in KRS 286.2-100 to ~~286.2-680~~~~286.2-105~~, unless the context requires otherwise:

- (1) "Financial institution" means a state or national bank, **bank holding company**, trust company, savings and loan association, **savings and loan association holding company**,~~or~~ credit union, **or wholly owned subsidiary thereof**;
- (2) "Interested person" means the surviving spouse of the lessee, an adult child of the lessee, a parent of the lessee, a person named as the personal representative in a copy of a purported will produced by such person, a person designated by the lessee in writing acceptable to the lessor that is filed with the lessor before death of the lessee, or a person named in a court order to examine the contents of a safe deposit box for a purpose listed in KRS 286.2-105(1);
- (3) "Lessee" means a person who contracts with a lessor for the use of a safe deposit box;
- (4) "Lessor" means a financial institution or safe deposit company that rents safe deposit facilities; and
- (5) "Safe deposit box" means a safe deposit box, vault, or other safe deposit receptacle maintained by a lessor that may be used for the safekeeping and storage of property and documents.

➔Section 24. KRS 286.2-670 is amended to read as follows:

- (1) Except as provided in subsection ~~(2)~~~~(10)~~ of this section, ~~a~~~~any~~ foreign **financial**~~lending~~ institution~~, including but not limited to any foreign banking corporation, any foreign corporation all of the capital stock of which is owned by one or more foreign banking corporations, any foreign savings and loan association, any foreign insurance company, or any foreign corporation or association authorized by its charter to invest in loans secured by real property and organized under the laws of any other state,~~ shall not be considered to be doing, transacting, or carrying on business in this state solely by reason of engaging in any or all of the following activities, either on its own behalf or as a trustee of a pension plan, employee's profit-sharing or retirement plan, or testamentary or inter vivos trust:
  - ~~(a)~~~~(1)~~ The lending of money, or the acquisition by purchase, by contract to purchase, by making of advance commitments to purchase, or by assignment to it of loans, including construction loans, or any interest in loans, secured in whole or in part by mortgages, deeds of trust or other forms of security on real or personal property in this state, if such activities are carried on from outside this state by the lending institution or within this state by independent agencies on behalf of said foreign lending institution;
  - ~~(b)~~~~(2)~~ The receipt of principal and interest on such loans;
  - ~~(c)~~~~(3)~~ The making of physical inspections and appraisals of real or personal property which secures or is proposed to secure any loan by an officer or employee of a foreign lending institution if the officer or employee making any physical inspections and appraisals is not a resident of and does not maintain his place of business in this state;
  - ~~(d)~~~~(4)~~ The ownership of any loans and the enforcement of any loans by trustee's sale, judicial process, or deed in lieu of foreclosure, or otherwise;
  - ~~(e)~~~~(5)~~ The modification, renewal, extension, transfer, or sale of loans or the acceptance of additional or substitute security therefor or the full or partial release of the security therefor or the acceptance of substitute or additional obligors thereon if the activities are carried on from outside this state by the lending institution or carried on within this state by independent agencies;
  - ~~(f)~~~~(6)~~ The maintaining and defending of any action or suits relating to loans, mortgages, deeds of trust, security instruments or related agreements or activities referred to herein or incidental thereto;
  - ~~(g)~~~~(7)~~ The engaging, by contractual arrangement, of a corporation, firm or association, qualified to do business in this state, which is not a subsidiary or parent of the lending institution or which is not under common management with the lending institution, to make collections and to service loans in any manner whatsoever, including the payment of ground rents, taxes, assessments, insurance and the like and the making, on behalf of the lending institution, of physical inspections and appraisals of real or personal property securing any loans or property which is proposed to secure any loans, and the performance of any such engagement;
  - ~~(h)~~~~(8)~~ The acquisition of title to the real or personal property covered by any mortgages, deeds of trust, or other security instrument, by trustees, pledgees, or judicial sales, or by deed in lieu of foreclosure or for the purpose of transferring title to any federal agency or instrumentality as the insurer or guarantor of any loans, the maintenance or defense of any action or suit relating to the possession of the property,

and the retention of title to any real or personal property as acquired pending the orderly sale or other disposition thereof; or

(i)~~(9)~~ The maintenance of bank accounts in banks, authorized or licensed to do and transact a banking business in this state.

(2)~~(10)~~ The provisions of this section shall be inapplicable in determining whether a financial institution is regularly engaged in business in this Commonwealth within the meaning of that phrase as used in KRS 136.500 to 136.575.

→Section 25. KRS 286.2-680 is amended to read as follows:

No foreign ~~financial~~~~lending~~ institution solely by reason of engaging in any one (1) or more of the activities set forth in KRS 286.2-670 shall be required to qualify to do business in this Commonwealth. Notwithstanding the foregoing, a financial institution, as defined in KRS 136.500, is subject to taxation within this Commonwealth if it meets the nexus requirement of KRS 136.520.

→SECTION 26. A NEW SECTION OF SUBTITLE 2 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

*Unless otherwise specifically provided for in this subtitle, the executive director may levy a civil penalty against any person who violates any provision of this subtitle, any administrative regulation promulgated under this subtitle, or any order issued by the executive director under this subtitle. The civil penalty shall be not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) per violation, plus the state's costs and expenses for the examination, investigation, and prosecution of the matter, including reasonable attorney's fees and court costs.*

→Section 27. KRS 286.8-012 is amended to read as follows:

Any party aggrieved by any decision of the executive director under the provisions of KRS 286.8-020 ~~or~~ ~~286.8-100, or 286.8-200,~~ may request an administrative hearing which shall be conducted in accordance with KRS Chapter 13B.

→Section 28. The following KRS sections are repealed:

286.8-038 Administrative regulations establishing standards for license testing, prelicensure education, and continuing education requirements for mortgage professionals.

286.8-040 Knowledge components of examinations.

286.8-042 Conduct of examinations.

286.8-200 Order of suspension or denial of license -- Notice -- Hearing.

286.8-230 Deadline for initial compliance.

**Signed by the Governor March 27, 2009.**

## CHAPTER 105

### (HB 321)

AN ACT relating to the collection, storage, and use of DNA samples.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

→Section 1. KRS 17.169 is repealed and reenacted to read as follows:

As used in this section and KRS 17.170 and 17.175, the following definitions shall apply:

- (1) "DNA sample" or "deoxyribonucleic acid sample" means a blood or swab specimen from a person, as prescribed by administrative regulation, that is required to provide a DNA sample pursuant to KRS 17.170 or 17.510, that shall be submitted to the Department of Kentucky State Police forensic laboratory for law enforcement identification purposes and inclusion in law enforcement identification databases; and
- (2) "Authorized personnel" means an agent of state government who is properly trained in DNA sample collection pursuant to administrative regulation.

➔Section 2. KRS 17.170 is repealed, reenacted, and amended to read as follows:

- (1) Any DNA sample collected pursuant to the law in effect prior to *the effective date of this Act*~~[July 1, 2008,]~~ shall be maintained and used pursuant to this section and KRS 17.175 and 17.510.
- (2) ***The following persons shall have a DNA sample collected by authorized personnel:***
  - (a) Any person convicted on or after *the effective date of this Act*~~[July 1, 2008,]~~ of a felony offense under under the Kentucky Revised Statutes; or
  - (b) ***Any juvenile who was at least fourteen (14) years of age at the time of the commission of the offense and who stands adjudicated delinquent of being a public offender by a court of competent jurisdiction, of:***
    1. ***Any felony offense in KRS Chapter 510;***
    2. ***Incest as defined in KRS 530.020;***
    3. ***Criminal attempt or criminal conspiracy to commit an offense identified in subparagraph 1. or 2. of this paragraph; or***
    4. ***Being a juvenile sexual offender under KRS 635.510***~~[, being thirteen (13) years of age or older at the time of the commission of the offense, adjudicated as a public offender for an offense identified in KRS 439.3401(1) or 530.020 on or after July 1, 2008, or who is in the custody of the Department of Corrections, the Department of Juvenile Justice, or a local or county jail on or after July 1, 2008, based upon a conviction or adjudication of an offense identified in this subsection, shall have a DNA sample collected by authorized personnel].~~
- (3) Any person who is required to register as a sex offender under KRS 17.510 who is not otherwise required to submit to a DNA sample collection under this section or KRS 17.510, including those persons convicted of a felony or adjudicated as a public offender on offenses in other jurisdictions as identified in KRS 17.510(6) and (7), shall have a DNA sample collected by authorized personnel.
- (4) Any person who is required to provide a DNA sample pursuant to subsection (2) of this section and who is released from custody upon sentencing or adjudication shall immediately report to the local probation and parole office and shall have a DNA sample collected by authorized personnel.
- (5) A DNA sample shall be obtained in an approved manner by authorized personnel, a physician, registered nurse, phlebotomist, medical technician, or medical technologist, and packaged with supplies and containers provided by the Department of Kentucky State Police forensic laboratory in accordance with administrative regulations promulgated by the cabinet. No civil liability shall attach to any person authorized to obtain the DNA sample as provided by this section as a result of the act of obtaining the DNA sample from any person, provided the procedure was done according to administrative regulations by the cabinet.
- (6) Authorized personnel collecting DNA samples under this section or KRS 17.510 are not engaging in the practice of medicine pursuant to KRS 311.550.
- (7) Any person required to provide a DNA sample under this section or KRS 17.510 who, after receiving notice of the requirement to provide a DNA sample, knowingly refuses to provide such DNA sample, shall be guilty of a Class A misdemeanor for each separate violation of the offense.
- (8) Any person who tampers or attempts to tamper with any DNA sample collected under this section or its container without lawful authority shall be guilty of a Class D felony.

➔Section 3. KRS 17.175 is repealed and reenacted to read as follows:

- (1) A centralized database of DNA (deoxyribonucleic acid) identification records for convicted or adjudicated offenders, crime scene specimens, unidentified human remains, missing persons, and close biological relatives of missing persons shall be established in the Department of Kentucky State Police under the direction, control, and supervision of the Department of Kentucky State Police forensic laboratory. The established system shall be compatible with the procedures set forth in a national DNA identification index to ensure data exchange on a national level.
- (2) The purpose of the centralized DNA database is to assist federal, state, and local criminal justice and law enforcement agencies within and outside the Commonwealth in the identification, detection, or exclusion of

individuals who are subjects of the investigation or prosecution of sex-related crimes, violent crimes, or other crimes and the identification and location of missing and unidentified persons.

- (3) The Department of Kentucky State Police forensic laboratory shall receive, analyze, and classify DNA samples received from the Department of Corrections, the Department of Juvenile Justice, and other sources, and shall file the DNA results in the centralized databases for law enforcement identification and statistical purposes.
- (4) DNA identification records produced from the samples are not public records but shall be confidential and used only for law enforcement purposes. DNA identification records shall be exempt from the provisions of KRS 61.870 to 61.884.
- (5) A person whose DNA profile has been included in the data bank pursuant to this chapter may request expungement on the grounds that the conviction or adjudication on which the authority for including the DNA profile was based has been reversed and the case dismissed, or that the person successfully completed the pretrial diversion program under KRS 533.258 and the charges were dismissed-diverted. The Department of Kentucky State Police shall expunge all identifiable information in the data bank pertaining to the person and destroy all samples from the person upon receipt of:
  - (a) A written request for expungement pursuant to this section; and
  - (b) Either:
    1. A certified copy of the court order reversing and dismissing the conviction or adjudication; or
    2. A certified copy of the court order deeming the charges dismissed-diverted.
- (6) The cabinet shall promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system to include procedures for collection of DNA samples and the database system usage and integrity.
- (7) The Department of Kentucky State Police shall destroy all DNA samples that are not entered into the DNA database identification system.
- (8) Any person who disseminates, receives, or otherwise uses or attempts to use information in the DNA database identification system, knowing that such dissemination, receipt, or use is for a purpose other than authorized by this section, shall be guilty of a Class D felony.

➔Section 4. KRS 17.500 is repealed and reenacted to read as follows:

As used in KRS 17.500 to 17.580:

- (1) "Approved provider" means a mental health professional licensed or certified in Kentucky whose scope of practice includes providing mental health treatment services and who is approved by the Sex Offender Risk Assessment Advisory Board, under administrative regulations promulgated by the board, to provide comprehensive sex offender presentence evaluations or treatment to adults and youthful offenders, as defined in KRS 600.020;
- (2) "Cabinet" means the Justice and Public Safety Cabinet;
- (3) (a) Except as provided in paragraph (b) of this subsection, "criminal offense against a victim who is a minor" means any of the following offenses if the victim is under the age of eighteen (18) at the time of the commission of the offense:
  1. Kidnapping, as set forth in KRS 509.040, except by a parent;
  2. Unlawful imprisonment, as set forth in KRS 509.020, except by a parent;
  3. Sex crime;
  4. Promoting a sexual performance of a minor, as set forth in KRS 531.320;
  5. Human trafficking involving commercial sexual activity, as set forth in KRS 529.100;
  6. Promoting prostitution, as set forth in KRS 529.040, when the defendant advances or profits from the prostitution of a person under the age of eighteen (18);
  7. Use of a minor in a sexual performance, as set forth in KRS 531.310;

8. Sexual abuse, as set forth in KRS 510.120 and 510.130;
  9. Unlawful transaction with a minor in the first degree, as set forth in KRS 530.064(1)(a);
  10. Any offense involving a minor or depictions of a minor, as set forth in KRS Chapter 531;
  11. Any attempt to commit any of the offenses described in subparagraphs 1. to 10. of this paragraph; and
  12. Solicitation to commit any of the offenses described in subparagraphs 1. to 10. of this paragraph.
- (b) Conduct which is criminal only because of the age of the victim shall not be considered a criminal offense against a victim who is a minor if the perpetrator was under the age of eighteen (18) at the time of the commission of the offense;
- (4) "Law enforcement agency" means any lawfully organized investigative agency, sheriff's office, police unit, or police force of federal, state, county, urban-county government, charter county, city, consolidated local government, or a combination of these, responsible for the detection of crime and the enforcement of the general criminal federal or state laws;
- (5) "Registrant" means:
- (a) Any person eighteen (18) years of age or older at the time of the offense or any youthful offender, as defined in KRS 600.020, who has committed:
    1. A sex crime; or
    2. A criminal offense against a victim who is a minor; or
  - (b) Any person required to register under KRS 17.510; or
  - (c) Any sexually violent predator; or
  - (d) Any person whose sexual offense has been diverted pursuant to KRS 533.250, until the diversionary period is successfully completed;
- (6) "Registrant information" means the name, including any lawful name change together with the previous name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, fingerprints, DNA sample, a photograph, aliases used, residence, electronic mail address and any instant messaging, chat, or other Internet communication name identities, a brief description of the crime or crimes committed, and other information the cabinet determines, by administrative regulation, may be useful in the identification of registrants;
- (7) "Residence" means any place where a person sleeps. For the purposes of this statute, a registrant may have more than one (1) residence. A registrant is required to register each residence address;
- (8) "Sex crime" means:
- (a) A felony offense defined in KRS Chapter 510, or KRS 530.020, 530.064(1)(a), 531.310, or 531.320;
  - (b) A felony attempt to commit a felony offense specified in paragraph (a) of this subsection; or
  - (c) A federal felony offense, a felony offense subject to a court-martial of the United States Armed Forces, or a felony offense from another state or a territory where the felony offense is similar to a felony offense specified in paragraph (a) of this subsection;
- (9) "Sexual offender" means any person convicted of, pleading guilty to, or entering an Alford plea to a sex crime as defined in this section, as of the date the verdict is entered by the court;
- (10) "Sexually violent predator" means any person who has been subjected to involuntary civil commitment as a sexually violent predator, or a similar designation, under a state, territory, or federal statutory scheme;
- (11) "The board" means the Sex Offender Risk Assessment Advisory Board created under KRS 17.554;
- (12) "Victim" has the same meaning as in KRS 421.500;
- (13) "DNA sample" or "deoxyribonucleic acid sample" means a blood or swab specimen from a person, as prescribed by administrative regulation, that is required to provide a DNA sample pursuant to KRS 17.170 or 17.510, that shall be submitted to the Department of Kentucky State Police forensic laboratory for law enforcement identification purposes and inclusion in law enforcement identification databases; and

- (14) "Authorized personnel" means an agent of state government who is properly trained in DNA sample collection pursuant to administrative regulation.

➔Section 5. KRS 17.510 is repealed, reenacted, and amended to read as follows:

- (1) The cabinet shall develop and implement a registration system for registrants which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.
- (2) A registrant shall, on or before the date of his or her release by the court, the parole board, the cabinet, or any detention facility, register with the appropriate local probation and parole office in the county in which he or she intends to reside. The person in charge of the release shall facilitate the registration process.
- (3) Any person required to register pursuant to subsection (2) of this section shall be informed of the duty to register by the court at the time of sentencing if the court grants probation or conditional discharge or does not impose a penalty of incarceration, or if incarcerated, by the official in charge of the place of confinement upon release. The court and the official shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register has been explained to the person. The court and the official in charge of the place of confinement shall require the releasee to complete the acknowledgment form and the court or the official shall retain the original completed form. The official shall then send the form to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.
- (4) The court or the official shall order the person to register with the appropriate local probation and parole office which shall obtain the person's fingerprints, DNA sample, and photograph. Thereafter, the registrant shall return to the appropriate local probation and parole office not less than one (1) time every two (2) years in order for a new photograph to be obtained, and the registrant shall pay the cost of updating the photo for registration purposes. Any registrant who has not provided a DNA sample as of July 1, ~~2009~~~~2008~~, shall provide a DNA sample to the appropriate local probation and parole office when the registrant appears for a new photograph to be obtained. Failure to comply with this requirement shall be punished as set forth in subsection (11) of this section.
- (5)
  - (a) The appropriate probation and parole office shall send the registration form containing the registrant information, fingerprint card, and photograph, and any special conditions imposed by the court or the Parole Board, to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601. The appropriate probation and parole office shall send the DNA sample to the Department of Kentucky State Police forensic laboratory in accordance with administrative regulations promulgated by the cabinet.
  - (b) The Information Services Center, upon request by a state or local law enforcement agency, shall make available to that agency registrant information, including a person's fingerprints and photograph, where available, as well as any special conditions imposed by the court or the Parole Board.
  - (c) Any employee of the Justice and Public Safety Cabinet who disseminates, or does not disseminate, registrant information in good faith compliance with the requirements of this subsection shall be immune from criminal and civil liability for the dissemination or lack thereof.
- (6) Any person who has been convicted in a court of any state or territory, a court of the United States, or a similar conviction from a court of competent jurisdiction in any other country, or a court martial of the United States Armed Forces of a sex crime or criminal offense against a victim who is a minor and who has been notified of the duty to register by that state, territory, or court, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws, or has a similar conviction from a court of competent jurisdiction in any other country, shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register with the appropriate local probation and parole office in the county of residence within five (5) working days of relocation. No additional notice of the duty to register shall be required of any official charged with a duty of enforcing the laws of this Commonwealth.
- (7) If a person is required to register under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register within five (5) working days with the

appropriate local probation and parole office in the county of residence, employment, vocation, or schooling. A person required to register under federal law or the laws of another state or territory shall be presumed to know of the duty to register in the Commonwealth. As used in this subsection, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.

- (8) The registration form shall be a written statement signed by the person which shall include registrant information, including an up-to-date photograph of the registrant for public dissemination.
- (9) For purposes of KRS 17.500 to 17.580 and 17.991, a post office box number shall not be considered an address.
- (10)
  - (a) If the residence address of any registrant changes, but the registrant remains in the same county, the person shall register, on or before the date of the change of address, with the appropriate local probation and parole office in the county in which he or she resides.
  - (b)
    1. If the registrant changes his or her residence to a new county, the person shall notify his or her current local probation and parole office of the new residence address on or before the date of the change of address.
    2. The registrant shall also register with the appropriate local probation and parole office in the county of his or her new residence no later than five (5) working days after the date of the change of address.
  - (c)
    1. As soon as a probation and parole office learns of the person's new address under paragraph (b)1. of this subsection, that probation and parole office shall notify the appropriate local probation and parole office in the county of the new address of the effective date of the new address.
    2. As soon as a probation and parole office learns of the person's new address under paragraph (b)2. of this subsection, that office shall forward this information as set forth under subsection (5) of this section.
- (11) Any person required to register under this section who knowingly violates any of the provisions of this section or prior law is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (12) Any person required to register under this section or prior law who knowingly provides false, misleading, or incomplete information is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (13)
  - (a) The cabinet shall verify the addresses of individuals required to register under this section. Verification shall occur at least once every ninety (90) days for a person required to register under KRS 17.520(2) and at least once every calendar year for a person required to register under KRS 17.520(3). If the cabinet determines that a person has moved without providing his or her new address to the appropriate local probation and parole office or offices as required under subsection (10)(a) and (b) of this section, the cabinet shall notify the appropriate local probation and parole office of the new address. The office shall then forward this information as set forth under subsection (5) of this section. The cabinet shall also notify the appropriate court, Parole Board, and appropriate Commonwealth's attorney, sheriff's office, probation and parole office, corrections agency, and law enforcement agency responsible for the investigation of the report of noncompliance.
  - (b) An agency that receives notice of the noncompliance from the cabinet under paragraph (a) of this subsection:
    1. Shall consider revocation of the parole, probation, or conditional discharge of any person released under its authority; and
    2. Shall notify the appropriate county or Commonwealth's Attorney for prosecution.

➔Section 6. KRS 17.580 is repealed and reenacted to read as follows:

- (1) The Department of Kentucky State Police shall establish a Web site available to the public. The Web site shall display:

- (a) The registrant information, except for information that identifies a victim, DNA samples, fingerprints, and Social Security numbers, obtained by the Information Services Center, Department of Kentucky State Police, under KRS 17.510;
- (b) The sex offender information, except for information that identifies a victim, DNA samples, Social Security numbers, and vehicle registration data, obtained by the Information Services Center, Department of Kentucky State Police, under KRS 17.510 prior to April 11, 2000; and
- (c) The registrant's conviction, the elements of the offense for which the registrant was convicted, whether the registrant is currently on probation or parole, and whether the registrant is compliant or noncompliant.

The Web site shall be updated every day except for Saturdays, Sundays, and state holidays.

- (2) The information pertaining to an individual shall be maintained on the Web site so long as that individual is registered in accordance with KRS 17.500 to 17.580.
- (3) The following language shall be prominently displayed on the Web site: "UNDER KRS 525.070 AND 525.080, USE OF INFORMATION OBTAINED FROM THIS WEB SITE TO HARASS A PERSON IDENTIFIED ON THIS WEB SITE IS A CRIMINAL OFFENSE PUNISHABLE BY UP TO NINETY (90) DAYS IN THE COUNTY JAIL. MORE SEVERE CRIMINAL PENALTIES APPLY FOR MORE SEVERE CRIMES COMMITTED AGAINST A PERSON IDENTIFIED ON THIS WEB SITE."
- (4)
  - (a) Any Department of Kentucky State Police employee who disseminates, or does not disseminate, registrant information or sex offender information in good faith compliance with the requirements of this section shall be immune from criminal and civil liability for the dissemination or lack thereof.
  - (b) Any person, including an employee of a sheriff's office, acting in good faith in disseminating, or not disseminating, information previously disseminated by the Department of Kentucky State Police shall be immune from criminal and civil liability for the dissemination or lack thereof.
- (5) The cabinet shall establish a toll-free telephone number for a person to call to learn the identity of the Web site created in this section and the location of public access to the Web site in the county where the person resides.
- (6) In addition to the Web site, a local law enforcement agency may provide personal notification regarding the registrants located in its jurisdiction. Any notification shall contain the warning specified in subsection (3) of this section.

➔Section 7. The following KRS sections are repealed:

- 17.171 Application of KRS 17.170 to DNA evidence in cases involving minors.
- 17.172 Application of KRS 17.170 to DNA evidence in burglary cases.
- 17.173 Application of KRS 17.170 to DNA evidence in capital cases and certain felony cases.
- 17.174 Application of KRS 17.171 and 17.172 to public offenders.
- 17.177 Effective dates and implementation of legislation relating to DNA testing.

➔Section 8. It is the intent of the General Assembly that the Department of Kentucky State Police may retain all DNA samples collected on or after July 1, 2008, pursuant to 2008 Ky. Acts, ch. 9 to 16.

➔Section 9. It is the intent of the General Assembly that the Department of Kentucky State Police may utilize DNA samples collected on or after July 1, 2008, pursuant to 2008 Ky. Acts, ch. 9 to 16 for the purposes specified therein.

➔Section 10. Whereas the effective and efficient protection of the public from crime is a fundamental duty of government and a needless delay in the implementation of this Act delays that protection, an emergency is declared to exist and this Act shall take effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Signed by the Governor March 27, 2009.**

## CHAPTER 106

## (HB 369)

AN ACT relating to crimes and punishments.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 434.650 is amended to read as follows:

- (1) A person who, with intent to defraud the issuer, a participating party, a person, or organization providing money, goods, services, or anything else of value, or any other person:
  - (a) Uses for the purpose of obtaining money, goods, services, or anything else of value a credit or debit card obtained or retained in violation of KRS 434.570 to 434.650, or any of such sections, or a credit or debit card which he knows is forged, expired, or revoked; or
  - (b) Obtains money, goods, services, or anything else of value by representing without consent of the cardholder that he is the holder of a specified card or by representing that he is the holder of a card and such card has not in fact been issued; or
  - (c) Uses a credit or debit card obtained or retained in violation of KRS 434.570 to 434.650, or any of such sections, or a credit or debit card which he knows is forged, expired, or revoked, as authority or identification to cash or attempts to cash or otherwise negotiate or transfer a check or other order for payment of money, whether or not negotiable, if said negotiation or transfer or attempt to negotiate or transfer would constitute a crime under KRS 514.040 or 516.030; or
  - (d) Deposits into his account or any account, via an automated banking device, a false, fictitious, forged, altered, or counterfeit check, draft, money order, or any other such document not his lawful or legal property,

is guilty of a Class A misdemeanor, if the value of all money, goods, services, or other things of value obtained in violation of this section ***over a six (6) month period is less than five hundred dollars (\$500)***, ~~does not exceed one hundred dollars (\$100) in any six (6) month period; and is guilty of~~ a Class D felony if such value ***is five hundred dollars (\$500) or more but is less than ten thousand dollars (\$10,000), or a Class C felony if such value is ten thousand dollars (\$10,000) or more*** ~~exceeds one hundred dollars (\$100) in any six (6) month period~~.

- (2) A person who receives money, goods, services, or anything else of value as a result of a false, fictitious, forged, altered, or counterfeit check, draft, money order, or any other such document having been deposited into an account via an automated banking device, knowing at the time of receipt of the money, goods, services, or item of value that the document so deposited was false, fictitious, forged, altered, or counterfeit or that the above described deposited item was not his lawful or legal property, violates this subsection and is subject to the penalties set forth in subsection (1) of this section.
- (3) Knowledge of revocation shall be presumed to have been received by a cardholder four (4) days after it has been mailed to him at the address set forth on the credit or debit card or at his last known address by registered or certified mail, return receipt requested, and, if the address is more than five hundred (500) miles from the place of mailing, by air mail. If the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal Zone, and Canada, notice shall be presumed to have been received ten (10) days after mailing by registered or certified mail.

➔Section 2. KRS 434.655 is amended to read as follows:

- (1) A cardholder who fraudulently uses a credit or debit card to obtain money, goods, services, or anything else of value after said cardholder has reported to the issuer said credit or debit card lost, as stolen, or not received is deemed to have used said credit or debit card in order to defraud the issuer; and said cardholder ***shall be guilty of a Class A misdemeanor*** ~~is subject to the penalties set forth in subsection (1) of KRS 434.730~~ if the value of all money, goods, services, or other things of value furnished in violation of this section ***over a six (6) month period is less than five hundred dollars (\$500), a Class D felony*** ~~does not exceed three hundred dollars (\$300) in any six (6) month period; and is subject to the penalties set forth in subsection (2) of KRS 434.730,~~ if such value ***is five hundred dollars (\$500) or more but is less than ten thousand dollars***

~~(\$10,000), or a Class C felony if such value is ten thousand dollars (\$10,000) or more [is three hundred dollars (\$300) or more in any six (6) month period].~~

- (2) A cardholder who, after using a credit or debit card, fraudulently reports to the issuer that such usage or transaction was not made by said cardholder, or that said credit or debit card was lost, stolen, or not received at the time of such usage or transaction, in order to defraud the issuer, the cardholder, or any other person in connection with said usage, **shall be guilty of a Class A misdemeanor** ~~[is subject to the penalties set forth in subsection (1) of KRS 434.730,]~~ if the value of all money, goods, services, or other things of value furnished in violation of this section **over a six (6) month period is less than five hundred dollars (\$500), a Class D felony if such value is five hundred dollars (\$500) or more but is less than ten thousand dollars (\$10,000), or a Class C felony if such value is ten thousand dollars (\$10,000) or more** ~~[does not exceed three hundred dollars (\$300) in any six (6) month period; and is subject to the penalties set forth in subsection (2) of KRS 434.730 if such value is three hundred dollars (\$300) or more in any six (6) month period].~~

➔Section 3. KRS 434.660 is amended to read as follows:

A person, business organization, or financial institution who is authorized by an issuer to furnish money, goods, services, or anything else of value upon presentation of a credit or debit card by a cardholder, or any agent or employee of such person, business organization, or financial institution, who, with intent to defraud the issuer, a participating party, the cardholder, or any other person, furnishes money, goods, or services or anything else of value upon presentation of a credit or debit card obtained or retained in violation of KRS 434.570 to 434.650, or any of such sections, or a credit or debit card which he knows is forged, expired, or revoked is guilty of a Class A misdemeanor, if the value of all money, goods, services, or other things of value furnished in violation of this section **over a six (6) month period is less than five hundred dollars (\$500),** ~~[does not exceed one hundred dollars (\$100) in any six (6) month period; and is guilty of]~~ a Class D felony ~~[,]~~ if such value **is five hundred dollars (\$500) or more but is less than ten thousand dollars (\$10,000), or a Class C felony if such value is ten thousand dollars (\$10,000) or more** ~~[exceeds one hundred dollars (\$100) in any six (6) month period].~~

➔Section 4. KRS 434.670 is amended to read as follows:

A person, business organization, or financial institution who is authorized by an issuer to furnish money, goods, services, or anything else of value upon presentation of a credit or debit card by a cardholder, or any agent or employee of such person, business organization, or financial institution, who, with intent to defraud the issuer, a participating party, the cardholder, or any other person, fails to furnish money, goods, services, or anything else of value which he represents in writing to the issuer that he has furnished **over a six (6) month period** is guilty of a Class A misdemeanor ~~[,]~~ if the difference between the value of all money, goods, services, or anything else of value actually furnished and the value represented to the issuer to have been furnished **is less than five hundred dollars (\$500),** ~~[does not exceed one hundred dollars (\$100) in any six (6) month period; and is guilty of]~~ a Class D felony **if such value is five hundred dollars (\$500) or more but is less than ten thousand dollars (\$10,000), or a Class C felony if such value is ten thousand dollars (\$10,000) or more.**

➔Section 5. KRS 434.690 is amended to read as follows:

- (1) A person who receives money, goods, services, or anything else of value obtained in violation of KRS 434.650, knowing or believing that it was so obtained is guilty of a Class A misdemeanor, if the value of all money, goods, services, and other things of value received in violation of this section **over a six (6) month period is less than five hundred dollars (\$500),** ~~[does not exceed one hundred dollars (\$100) in any six (6) month period; and is guilty of]~~ a Class D felony ~~[,]~~ if such value **is five hundred dollars (\$500) or more but is less than ten thousand dollars (\$10,000), or a Class C felony if such value is ten thousand dollars (\$10,000) or more** ~~[exceeds one hundred dollars (\$100) in any six (6) month period].~~
- (2) A person who possesses three (3) or more tickets for airline, railroad, steamship, or other transportation service, which tickets were obtained by the use of a stolen or forged credit or debit card is presumed to know that such tickets were so obtained.

➔Section 6. KRS 514.030 is amended to read as follows:

- (1) Except as otherwise provided in KRS 217.181 or 218A.1418, a person is guilty of theft by unlawful taking or disposition when he unlawfully:
- (a) Takes or exercises control over movable property of another with intent to deprive him thereof; or

- (b) Obtains immovable property of another or any interest therein with intent to benefit himself or another not entitled thereto.
- (2) Theft by unlawful taking or disposition is a Class A misdemeanor unless the value of the property is **five hundred dollars (\$500)**~~three hundred dollars (\$300)~~ or more, in which case it is a Class D felony; or unless:
  - (a) The property is a firearm (regardless of the value of the firearm), in which case it is a Class D felony;~~or~~
  - (b) The property is anhydrous ammonia (regardless of the value of the ammonia), in which case it is a Class D felony unless it is proven that the person violated this section with the intent to manufacture methamphetamine in violation of KRS 218A.1432, in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense; **or**
  - (c) ***The value of the property is ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.***

➔Section 7. KRS 514.040 is amended to read as follows:

- (1) A person is guilty of theft by deception when the person obtains property or services of another by deception with intent to deprive the person thereof. A person deceives when the person intentionally:
  - (a) Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind;
  - (b) Prevents another from acquiring information which would affect judgment of a transaction;
  - (c) Fails to correct a false impression which the deceiver previously created or reinforced or which the deceiver knows to be influencing another to whom the person stands in a fiduciary or confidential relationship;
  - (d) Fails to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property which the person transfers or encumbers in consideration for the property obtained, whether the impediment is or is not valid or is or is not a matter of official record; or
  - (e) Issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.
- (2) The term "deceive" does not, however, include falsity as to matters having no pecuniary significance or puffing by statements unlikely to deceive ordinary persons in the group addressed.
- (3) Deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise.
- (4) For purposes of subsection (1) of this section, a maker of a check or similar sight order for the payment of money is presumed to know that the check or order, other than a postdated check or order, would not be paid, if:
  - (a) The maker had no account with the drawee at the time the check or order was issued; or
  - (b) Payment was refused by the drawee for lack of funds, upon presentation within thirty (30) days after issue, and the maker failed to make good within ten (10) days after receiving notice of that refusal. Notice of the refusal may include a citation to this section and a description of this section's criminal penalties and shall be deemed properly addressed when mailed to the address printed or written on the check or sight order or provided by the drawer or maker upon issuance of the check or sight order. The notice, if mailed, shall be deemed received by the addressee seven (7) days after it is placed in the United States mail. The notice may be sent by first-class mail if supported by an affidavit of service setting out the contents of the notice, the address to which the notice was mailed, that correct postage was applied, and the date the notice was placed in the United States mail. A maker makes good on a check or similar sight order for the payment of money by paying to the holder the face amount of the instrument, together with any merchant's posted reasonable bad check handling fee not to exceed fifty dollars (\$50) and any fee imposed pursuant to subsection (5) of this section.
- (5) If a county attorney issues notice to a maker that a drawee has refused to honor an instrument due to a lack of funds as described in subsection (4)(b) of this section, the county attorney may charge a fee to the maker of fifty dollars (\$50), if the instrument is paid. Money paid to the county attorney pursuant to this section shall be

used only for payment of county attorney office operating expenses. Excess fees held by the county attorney on June 30 of each year shall be turned over to the county treasurer before the end of the next fiscal year for use by the fiscal court of the county.

- (6) A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of any tax payable to the Commonwealth knowing that it will not be honored by the drawee.
- (7) A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of a child support obligation knowing that it will not be honored by the drawee.
- (8) Theft by deception is a Class A misdemeanor unless the value of the property, service, or the amount of the check or sight order referred to in subsection (6) or (7) of this section is:
  - (a) **Five hundred dollars (\$500)**~~three hundred dollars (\$300)~~ or more **but less than ten thousand dollars (\$10,000)**, in which case it is a Class D felony; **or**
  - (b) **Ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.**

➔Section 8. KRS 514.050 is amended to read as follows:

- (1) Except as provided in KRS 365.710, a person is guilty of theft of property lost, mislaid, or delivered by mistake when:
  - (a) He comes into control of the property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient; and
  - (b) With intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it.
- (2) Theft of property lost, mislaid, or delivered by mistake is a Class A misdemeanor unless the value of the property is:
  - (a) **Five hundred dollars (\$500)**~~three hundred dollars (\$300)~~ or more **but less than ten thousand dollars (\$10,000)**, in which case it is a Class D felony; **or**
  - (b) **Ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.**

➔Section 9. KRS 514.060 is amended to read as follows:

- (1) A person is guilty of theft of services when:
  - (a) The person intentionally obtains services by deception or threat or by false token or other means to avoid payment for the services which he knows are available only for compensation;
  - (b) The person intentionally obtains wireless communications services or access to services by any of the following means:
    - 1. Unauthorized interception of any electronic serial number, mobile identification number, personal identification number, or like identifying number;
    - 2. Unauthorized interception of any cellular service or personal communications service as terms may be defined in 47 C.F.R. parts 22 and 24 respectively;
    - 3. Unauthorized interception of any similar telephone service; or
    - 4. Use of deception, threat, or other means to avoid payment for the services which the person knows are available only for charge or compensation; or
  - (c) Having control over or unauthorized access to the use of the services of others to which the person is not entitled, the person intentionally diverts the services to the person's own benefit or the benefit of another not entitled thereto.
- (2) Where compensation for services is ordinarily paid immediately upon the rendering of the services, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay shall be prima facie evidence that the services were obtained by deception as to intention to pay.
- (3) In any prosecution for theft of gas, water, electricity, or other public service, where the utility supplying the service had installed a meter or other device to record the amount of service supplied, proof that:

- (a) The meter or other device has been altered, tampered with, or bypassed in a manner so as to prevent or reduce the recording thereof; or
- (b) Service has been, after having been disconnected by the utility supplying service, reconnected without authorization of the utility

shall be prima facie evidence of the intent to commit theft of service by the person or persons obligated to pay for service supplied through the meter or other device.

- (4) Theft of services is a Class A misdemeanor unless the value of the service is:
  - (a) **Five hundred dollars (\$500)**~~three hundred dollars (\$300)~~ or more **but less than ten thousand dollars (\$10,000)**, in which case it is a Class D felony; **or**
  - (b) **Ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.**

➔Section 10. KRS 514.070 is amended to read as follows:

- (1) A person is guilty of theft by failure to make required disposition of property received when:
  - (a) He obtains property upon agreement or subject to a known legal obligation to make specified payment or other disposition whether from such property or its proceeds or from his own property to be reserved in equivalent amount; and
  - (b) He intentionally deals with the property as his own and fails to make the required payment or disposition.
- (2) The provisions of subsection (1) apply notwithstanding that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition.
- (3) An officer or employee of the government or of a financial institution is presumed:
  - (a) To know any legal obligation relevant to his criminal liability under this section; and
  - (b) To have dealt with the property as his own when:
    - 1. He fails to account or pay upon lawful demand; or
    - 2. An audit reveals a shortage or falsification of accounts.
- (4) Theft by failure to make required disposition of property received is a Class A misdemeanor unless the value of the property is:
  - (a) **Five hundred dollars (\$500)**~~three hundred dollars (\$300)~~ or more **but less than ten thousand dollars (\$10,000)**, in which case it is a Class D felony; **or**
  - (b) **Ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.**
- (5) No person shall be convicted of theft by failure to make required disposition of property received when he or she has also been convicted of a violation of KRS 522.050 arising out of the same incident.

➔Section 11. KRS 514.080 is amended to read as follows:

- (1) A person is guilty of theft by extortion when he intentionally obtains property of another by threatening to:
  - (a) Inflict bodily injury on anyone or commit any other criminal offense; or
  - (b) Accuse anyone of a criminal offense; or
  - (c) Expose any secret tending to subject any person to hatred, contempt, or ridicule, or to impair his credit or business repute; or
  - (d) Use wrongfully his position as a public officer or servant or employee by performing some act within or related to his official duties, either expressed or implied, or by refusing or omitting to perform an official duty, either expressed or implied, in a manner affecting some person adversely; or
  - (e) Bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or
  - (f) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

- (2) It is a defense to prosecution based on subsection (1)(b), (c), or (d) that the property obtained by threat of accusation, exposure, lawsuit, or other invocation of official action was claimed as restitution or indemnification for harm done in the circumstances to which accusation, exposure, lawsuit, or other official action relates, or as compensation for property or lawful services.
- (3) Theft by extortion is a Class A misdemeanor unless the value of the property obtained is:
- (a) **Five hundred dollars (\$500)**~~three hundred dollars (\$300)~~ or more **but less than ten thousand dollars (\$10,000)**, in which case it is a Class D felony; **or**
- (b) **Ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.**

➔Section 12. KRS 514.090 is amended to read as follows:

- (1) A person is guilty of theft of labor already rendered when, in payment of labor already rendered by another, he intentionally issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.
- (2) For purposes of subsection (1) of this section, an issuer of a check or similar sight order for the payment of money is presumed to know that the check or order, other than a postdated check or order, would not be paid, if:
- (a) The issuer had no account with the drawee at the time the check or order was issued; or
- (b) Payment was refused by the drawee for lack of funds, upon presentation within thirty days (30) after issue, and the issuer failed to make good within ten (10) days after receiving notice of that refusal.
- (3) Theft of labor already rendered is a Class A misdemeanor unless the value of the labor rendered is:
- (a) **Five hundred dollars (\$500)**~~three hundred dollars (\$300)~~ or more **but less than ten thousand dollars (\$10,000)**, in which case it is a Class D felony; **or**
- (b) **Ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.**

➔Section 13. KRS 514.110 is amended to read as follows:

- (1) A person is guilty of receiving stolen property when he receives, retains, or disposes of movable property of another knowing that it has been stolen, or having reason to believe that it has been stolen, unless the property is received, retained, or disposed of with intent to restore it to the owner.
- (2) The possession by any person of any recently stolen movable property shall be prima facie evidence that such person knew such property was stolen.
- (3) Receiving stolen property is a Class A misdemeanor unless:
- (a) The value of the property is **five hundred dollars (\$500)**~~three hundred dollars (\$300)~~ or more **but less than ten thousand dollars (\$10,000)**, in which case it is a Class D felony;
- (b) **The value of the property is ten thousand dollars (\$10,000) or more, in which case it is a Class C felony;**~~for unless;~~
- (c)~~(a)~~ The property is a firearm, regardless of the value of the firearm, in which case it is a Class D felony; or
- (d)~~(b)~~ The property is anhydrous ammonia, regardless of the value of the ammonia, in which case it is a Class D felony unless it is proven that the person violated this section with the intent to manufacture methamphetamine in violation of KRS 218A.1432, in which case it is a Class B felony for the first offense and a Class A felony for each subsequent offense.

➔Section 14. KRS 514.120 is amended to read as follows:

- (1) A person is guilty of obscuring the identity of a machine or other property when he or she:
- (a) Removes, defaces, covers, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark, including property marked with a Social Security number or motor vehicle operator's license number for identification purposes, upon any

automobile or other propelled vehicle, machine, or electrical or mechanical device, or other property, including any part thereof, with intent to render it or other property unidentifiable; or

- (b) Possesses any automobile or other propelled vehicle, machine, or electrical or mechanical device, or other property, including any part thereof, knowing that the serial number or other identification number or mark, including property marked with a Social Security number for identification purposes, has been removed, defaced, covered, altered, destroyed, or otherwise obscured.
- (2) Possession of any automobile or other propelled vehicle, machine, or electrical or mechanical device, or other property, including any part thereof, on which the serial number or any other distinguishing identification number or mark, including property marked with a Social Security number or motor vehicle operator's license number for identification purposes, has been removed, defaced, covered, altered, destroyed, or otherwise obscured is prima facie evidence of knowledge of that fact.
- (3) A person in possession of any property which is otherwise in violation of this section may apply in writing to the Department of Kentucky State Police, through any law enforcement agency in the county of his or her residence, for assignment of a number for the property providing he or she can show that he or she is the lawful owner of the property pursuant to the provisions of this section and KRS 16.200 and 500.090. If a number is issued in conformity with the provisions of this section and KRS 16.200 and 500.090, then the person to whom it was issued and any person to whom the property is lawfully disposed of shall not be in violation of these sections. A person lawfully holding a certification issued pursuant to KRS 500.090 shall also be deemed in compliance with this section. This section shall apply only when the application has been filed by the defendant prior to arrest or authorization of a warrant of arrest for the defendant by a court.
- (4) Obscuring the identity of a machine or other property is a Class A misdemeanor unless the value of the property is:
  - (a) ***Five hundred dollars (\$500)***~~three hundred dollars (\$300)~~ or more ***but less than ten thousand dollars (\$10,000)***, in which case it is a Class D felony; ***or***
  - (b) ***Ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.***

➔Section 15. KRS 506.120 is amended to read as follows:

- (1) A person, with the purpose to establish or maintain a criminal syndicate or to facilitate any of its activities, shall not do any of the following:
  - (a) Organize or participate in organizing a criminal syndicate or any of its activities;
  - (b) Provide material aid to a criminal syndicate or any of its activities, whether such aid is in the form of money or other property, or credit;
  - (c) Manage, supervise, or direct any of the activities of a criminal syndicate, at any level of responsibility;
  - (d) Knowingly furnish legal, accounting, or other managerial services to a criminal syndicate;
  - (e) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of, any offense of a type in which a criminal syndicate engages on a continuing basis;
  - (f) Commit, or conspire or attempt to commit or act as an accomplice in the commission of, any offense of violence;~~or~~
  - (g) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of bribery in violation of KRS Chapters 518 or 521, or KRS 119.205, 121.025, 121.055, 524.070, 156.465, 45A.340, 63.090, 6.080, 18A.145, or 244.600;
  - (h) ***Commit, or conspire or attempt to commit, or act as an accomplice in the commission of more than one (1) theft of retail merchandise with the intent to resell the stolen merchandise; or***
  - (i) ***Acquire stolen retail merchandise for the purpose of reselling it where the person knew or should have known that the merchandise had been stolen.***
- (2) Whoever violates this section is guilty of engaging in organized crime, which shall be a Class B felony, ***unless the offense involves only the theft or acquisition of retail merchandise for the purpose of reselling it in which case it shall be a Class C felony.***

- (3) As used in this section "criminal syndicate" means five (5) or more persons, *or, in cases of merchandise theft from a retail store for the purpose of reselling the stolen merchandise, two (2) or more persons*, collaborating to promote or engage in any of the following on a continuing basis:
- (a) Extortion or coercion in violation of KRS 514.080 or 521.020;
  - (b) Engaging in, promoting, or permitting prostitution or human trafficking in violation of KRS Chapter 529;
  - (c) Any theft offense as defined in KRS Chapter 514;
  - (d) Any gambling offense as defined in KRS 411.090, KRS Chapter 528, or Section 226 of the Constitution;
  - (e) Illegal trafficking in controlled substances as prohibited by KRS Chapter 218A, in intoxicating or spirituous liquor as defined in KRS Chapters 242 or 244, or in destructive devices or booby traps as defined in KRS Chapter 237; or
  - (f) Lending at usurious interest, and enforcing repayment by illegal means in violation of KRS Chapter 360.

➔Section 16. KRS 532.356 is amended to read as follows:

- (1) Upon a person's conviction and sentencing for any nonstatus juvenile offense, moving traffic violation, criminal violation, misdemeanor, or Class D felony offense, *and, for the purposes of paragraph (b) of this subsection, any Class C felony offense listed in subsection (3) of this section*, the court shall impose the following sanctions in addition to any imprisonment, fine, court cost, or community service:
  - (a) Reimbursement to the state or local government for the person's incarceration, determined by the per person, per diem, expenses of each prisoner incarcerated by the respective local government, times the number of days he has spent or shall spend in confinement, plus any medical services received by the prisoner, less copayments paid by the prisoner. The convicted person's ability to pay all or part of the reimbursement shall be considered by the sentencing court in imposing the sanction; and
  - (b) Restitution to the crime victim as set out in KRS 439.563, 532.032, and 532.033.
- (2) In addition to any other penalty allowed by law, a court may declare the defendant ineligible to operate a motor vehicle for a period of up to sixty (60) days where the defendant is being sentenced for a conviction of KRS 514.030 involving the theft of gasoline or special fuels from a retail establishment and the defendant has been previously convicted of KRS 514.030 for a theft of gasoline or special fuels from a retail establishment. A retail establishment may post a sign at the location where the fuel is dispensed apprising the public of the sanctions available under this subsection.
- (3) (a) *In addition to any other penalty allowed by law, a court shall declare the defendant ineligible to operate a motor vehicle for the period of time that any amount of restitution ordered under this section remains unpaid, where the restitution is imposed as the result of the commission of the following offenses:*
  - 1. *Section 1 of this Act;*
  - 2. *Section 2 of this Act;*
  - 3. *Section 3 of this Act;*
  - 4. *Section 4 of this Act;*
  - 5. *Section 5 of this Act;*
  - 6. *Section 6 of this Act;*
  - 7. *Section 7 of this Act;*
  - 8. *Section 8 of this Act;*
  - 9. *Section 9 of this Act;*
  - 10. *Section 10 of this Act;*

- 11. *Section 11 of this Act;*
- 12. *Section 12 of this Act;*
- 13. *Section 13 of this Act;*
- 14. *Section 14 of this Act; or*
- 15. *Section 15 of this Act.*

- (b) *Upon motion by the defendant with proper notice to the office of the attorney who represented the Commonwealth at sentencing, the court may authorize the defendant to obtain the hardship license authorized under KRS Chapter 189A. The defendant shall be subject to the same operating restrictions and penalties for noncompliance as are set out for a hardship license in that chapter. The court may waive compliance with provisions of KRS Chapter 189A relating to alcohol treatment and ignition interlock installation for the purpose of authorizing issuance of a hardship license under this section.*
- (4) Sanctions imposed by the sentencing court shall become a judgment of the court. Reimbursement of incarceration costs shall be paid by the defendant directly to the jailer in the amount specified by written order of the court. Incarceration costs owed to the Department of Corrections shall be paid through the circuit clerk.

**Signed by the Governor March 27, 2009.**

## CHAPTER 107

### (HCR 85)

A CONCURRENT RESOLUTION expressing the commitment of the Kentucky General Assembly to maintain the states as the sole regulators of the business of insurance and to express the opposition of the General Assembly to any proposed federal law that would establish a federal insurance regulatory system.

WHEREAS, state insurance regulators have ensured the solvency of this nation's insurers, implemented a comprehensive consumer protection scheme, licensed insurance companies and agents, and supervised other areas of the insurance business for over one hundred and fifty years; and

WHEREAS, state regulators oversee thousands of insurance companies and millions of agents and respond to more than three million inquiries per year; and

WHEREAS, state insurance regulation has been largely successful and effective, has adapted to changes in the marketplace, and encourages innovation; and

WHEREAS, state legislators and state insurance regulators are more responsive to the needs of consumers and are more aware of and responsive to the unique characteristics and demands of individual states; and

WHEREAS, many states, including Kentucky, regularly update state insurance laws to meet the needs of the citizens of the Commonwealth and the insurance industry; and

WHEREAS, governors, state legislators, and insurance commissioners have acknowledged the need to streamline and simplify insurance regulation and are working to enact reforms to remedy the unnecessary differences in state laws and eliminate requirements that prevent insurers and agents from serving the needs of insurance consumers in an effective and timely manner; and

WHEREAS, the 109th and 110th Congress considered legislation that would establish an entirely new insurance regulatory system at the federal level and threaten the continued viability of the state system in the process; and

WHEREAS, a new and untested federal insurance regulatory system would almost certainly be more remote and politicized and less accessible and responsive than the current state system; and

WHEREAS, if enacted by Congress, these proposals would bifurcate insurance regulation between the states and the federal government, undermining the state system of consumer protections and financial surveillance, as well as inevitably causing a loss of jobs, taxes, fees, and other vital and necessary state revenues needed to effectively regulate the insurance market and provide revenues to support residual market programs; and

WHEREAS, a dual regulatory structure would create consumer confusion; and

WHEREAS, insurance companies paid \$14.3 billion in annual premium taxes to the states in 2007, and a federalization of insurance regulation could put these payments and other fees and revenues at risk;

NOW, THEREFORE,

***Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:***

➔Section 1. The Kentucky General Assembly is committed to maintaining the states as the sole regulators of the business of insurance and will continue to support state efforts to streamline, simplify, and modernize insurance regulation.

➔Section 2. The Kentucky General Assembly opposes any proposed law that would establish a federal insurance regulatory system or otherwise alter the McCarran-Ferguson Act.

➔Section 3. The Clerk of the House of Representatives is directed to transmit duly authenticated copies of this Resolution to the members of the Kentucky Congressional delegation, to Governor Steven L. Beshear, to the members of the United States House of Representatives Financial Services Committee, to the members of the United States Senate Banking Committee, to the United States Secretary of the Treasury, and to the news media of Kentucky.

**Signed by the Governor March 27, 2009.**

## CHAPTER 108

### (HJR 29)

A JOINT RESOLUTION designating the "Specialist Jeremy R. Gullett Memorial Bridge" in Greenup County and declaring an emergency.

WHEREAS, Specialist Jeremy R. Gullett was born June 4, 1985, in Ashland, Kentucky, and he traversed these earthly bounds May 7, 2008; and

WHEREAS, Jeremy R. Gullett was the loving son of Harold Raymond and Cheryl Dillow Gullett; he was the loving husband of Janeth Ygana Gullett; he was the caring father of two daughters, Katie Gullett and Kaye Ygana; he was the doting brother of Chester (Brandy) Gullett, and Jennipher (Jeff) Kouns; he was the nephew of Ron Gullett; he was the son-in-law of Mario Lucanas and Elvira Ebero Ygana; he was the grandson of a maternal grandmother, Diane Dillow, and a paternal grandmother, Vonda Boyle Gullett; he also leaves behind a nephew, Corbin Kouns; two nieces, Hailey Gullett, and Chae Kouns; and many other family members who loved him dearly; and

WHEREAS, Specialist Jeremy R. Gullett graduated from Greenup County High School in 2003 where he enrolled in the school's Junior ROTC program; and he was a member of the Little Sandy Volunteer Fire Department and Veterans of Foreign Wars; and

WHEREAS, Specialist Jeremy R. Gullett enlisted in the United States Army in June 2004; he was assigned to the 4th Battalion, 320th Field Artillery Regiment, 4th Brigade Combat Team, 101st Airborne Division (Air Assault), Fort Campbell; he was previously stationed in Korea for 2 1/2 years; and he deployed in support of Operation Enduring Freedom in March 2008; and

WHEREAS, the life of Specialist Jeremy R. Gullett ended prematurely from injuries suffered when an improvised explosive device detonated near his vehicle during combat operations in Sabari District, Afghanistan; and

WHEREAS, Specialist Jeremy R. Gullett gallantly served his country with honor and distinction; he was remembered as "a good soldier and, more importantly...a great person" by his former unit commander, he was also remembered as a "good kid" by his former Junior ROTC instructor; he was laid to rest with full military and firefighter honors; and his awards and decorations include the Army Achievement Medal, Army Good Conduct Medal, National Defense Service Medal, Korea Defense Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon, Driver and Mechanic badge with Driver (wheeled and tracked vehicles), and Weapons Qualifications, M4 expert; and

WHEREAS, the Commonwealth of Kentucky has the highest respect for Specialist Jeremy R. Gullett and is deeply grateful for the sacrifice he made for the freedom of all Americans and to ensure the freedom of the Afghan people; and

WHEREAS, the passing of Specialist Jeremy R. Gullett has left a void that cannot be filled, and he is mourned across the length and breadth of the Commonwealth;

NOW, THEREFORE,

***Be it resolved by the General Assembly of the Commonwealth of Kentucky:***

➔Section 1. The members of this body, both individually and collectively, do hereby express their profound sense of sorrow upon the passing of Specialist Jeremy R. Gullett and extend to his family and many friends their most heartfelt sympathy.

➔Section 2. The Transportation Cabinet shall, on June 4, 2009, designate bridge number B00057, located on Kentucky Route 2 over the Little Sandy River in Greenup County at milepoint 13.203, as the "Specialist Jeremy R. Gullett Memorial Bridge" and shall erect appropriate signs denoting this designation.

➔Section 3. Whereas, the designation date cited in Section 2 of this Joint Resolution falls prior to the ordinary effective date for legislation from this session, an emergency is declared to exist, and this Joint Resolution takes effect on June 4, 2009.

➔Section 4. The Clerk of the House of Representatives is hereby directed to transmit a copy of this Joint Resolution to the parents of Specialist Jeremy R. Gullett, Harold Raymond and Cheryl Dillow Gullett, 193 Christian Lane, Greenup, Kentucky 41144; and to the wife of Specialist Jeremy R. Gullett, Janeth Ygana Gullett, 193 Christian Lane, Greenup, Kentucky 41144.

**Signed by the Governor March 27, 2009.**